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

Myra A. Pish, CSR No. 11613
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UNITED STATES DEPARTMENT 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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APPEARANCES:
U.S. DEPARTMENT OF AGRICULTURE: Office of the General Counsel
BY: BRIAN HILL, ESQ.
RUPA CHILUKURI, ESQ., ESQ.

U.S. DEPARTMENT OF AGRICULTURE: WILLIAM FRANCIS, Dairy Product Marketing Specialist
LAUREL MAY, Marketing Specialist
PAMELA ELLIOTT, Marketing Specialist

CALIFORNIA DAIRIES, INC., DAIRY FARMERS OF AMERICA, INC., LAND O'LAKE, INC.: Law Offices of Marvin Beshore
BY: MARVIN BESHOE, ESQ.
Hanson Bridgett, San Francisco
BY: JOHN VLAHOS, ESQ.

DAIRY INSTITUTE OF CALIFORNIA: Davis Wright Tremaine
BY: CHIP ENGLISH, ESQ.
ASHLEY VULIN, ESQ.

LEPRINO FOODS: SUE TAYLOR, Vice-President
Dairy Economics and Policy
MIGUEL RAMIREZ

DEAN FOODS COMPANY: ROB BLAUFUSS

HILMAR CHEESE COMPANY: JOHN VETNE
JAMES DeJONG

CALIFORNIA PRODUCER HANDLERS ASSOCIATION: Stoel Rives
BY: NICOLE HANCOCK, ESQ

SELECT MILK PRODUCERS: MILTNER LAW FIRM, INC.
BY: RYAN MILTNER, ESQ.

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MONDAY, OCTOBER 26, 2015 — MORNING SESSION

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


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

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


MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,
Assistant to the Deputy Administrator Dairy Programs. And, Chip, I caught your cold.


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


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

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

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

California.


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

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


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

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


JUDGE CLIFTON: I would like now to take the appearance of anyone who has not yet come to the podium who expects to
testify today. All right. No one yet. I do understand we
have some coming. All right.

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

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

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

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

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

Also, Mr. Beshore tells me that he has two producers
who will be tentatively coming in this morning and would like
to testify right after lunch, if they can get on the schedule.
So that is all I have.

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

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

Looking at the topic list, and part of this is because
I myself was a little confused last week, as we move out of
opening statements, and obviously, we have some witnesses who
are more general, but as we move out of the opening statements,
we're going to move into Topic 2, and that's definitions and
pooling standards. And I think last week I might have put
pricing ahead of pooling, because I keep thinking of the
pooling issues being under Topic 8, but it really is under
Topic 2. So we'll be taking up sort of the pooling issues,
which is to say the definitions of distributing plant, supply
plant, and handlers as part of Topic 2. We also have a
witness, as I said last week just one, and I'm right, a witness
on sort of uniform provisions. And by definition, that sort of
covers a gamut of topics, starting with Topic 2 through all the
way to Topic 9. So to the extent we have uniform provisions,
we'll have a very short statement on that, and that's expected
to be Mr. Zolin.

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

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

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

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

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

I did look this morning at the private enterprise website, the one that is located at www.my-dairyman.com, and I believe they are not posting exhibits, at least so far, until they can take the official one from the USDA page. So I don't think they are putting up proposed exhibits at this point. And I could not yet make the recorded audio work, so I think they are still working on that. I still think that will be a very useful source for us.
The only other preliminary matter I would have is just to indicate that the docket number is, in brackets, [AO] docket number 15-0071.

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


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

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

JUDGE CLIFTON:  Yes.

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

JUDGE CLIFTON:  Is it a capital DE?

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

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

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

JUDGE CLIFTON:  It does to me.

MR. DeJONG:  Just no space, since we're keeping it official here.
JUDGE CLIFTON: I think what we have been doing so far in the transcript is we have a space, which is actually the correct way.

MR. DEJONG: Yes.

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

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

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

MS. ELLIOTT: 102.

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

(Thereafter, Exhibit 102 was marked for identification.)

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

DIRECT EXAMINATION

BY MR. VETNE:

Q. Mr. DeJong, on pages 15 to 16 you have some discussion about producers in Federal Marketing Orders getting paid below minimum, and there was a line graph that you referred to to illustrate that point, which was figure 13 in the exhibit, I
think it would have been 100, correct?

A. Correct.

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

A. Correct.

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

A. That is correct.

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

A. Correct.

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


BY MR. VETNE:

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

A. I believe so.

Q. Okay. Okay. And the adjustments that you made, so others can compare for themselves, is in the footnote on...
Exhibit 102; is that correct?

A. Yes.

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

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

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

A. Yes.

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

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

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Thank you.

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

JUDGE CLIFTON: Thank you. We appreciate this. We appreciate all the diligence in getting the most up-to-date and accurate information before the decision makers.
Exhibit 102 is now being considered. Is there anyone who would like to question Mr. DeJong before determining whether you have any objection? Ms. May?

CROSS-EXAMINATION

BY MS. MAY:

Q. Laurel May with USDA.

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

A. Yes.

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

A. Okay.

Q. Thanks.

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

(Thereafter, Exhibit 102 was received into evidence.)

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

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

MR. BESHORE: I would.
CROSS-EXAMINATION

BY MR. BESHORE:

Q. Thank you, your Honor. Marvin Beshore.

Good morning, Mr. DeJong.

A. Good morning.

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

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

A. Yes, you are right there.

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

A. Yes, in the footnote at the bottom of the graph I say, "milk test data for Texas and New Mexico was state specific." I got that information from the Southwest Order MA website, where they break down the states with the particular protein, fat, other solids test, so I used the Class III components, and multiplied them out by the test to come with a Class III at test, if you are following me. And then I also added the PPD for that area. And I did the same approach with Michigan, except I couldn't find Michigan state-specific components breaking out, so I used that Order's test average.
Q. Okay. So you are comparing the all milk price in these areas with the Class III price plus the PPD?
   A. You bet. Basically.
   Q. So the all milk price represents a blend of all the uses in these areas, right?
   A. Yes.
   Q. So why are you comparing it just to the cheese price?
   A. I'm not comparing it just to the cheese price, that's why I used the PPD as the adjustment. So the other money that was in that Order would be reflected in PPD beyond Class III, that's why I put the PPD in.
   Q. Is that, are you assuming that's a proxy for the, what the statistical blend price or the uniform --
   A. Yeah, it was to get a blend price at test. That's what I was trying to get to.
   Q. So for New Mexico you used, what, Dallas minus the 90, so what -- what's the assumption there?
   A. So the Southwest MMO, they show a PPD on their website that's announced every month and it is at the Dallas location, so I subtracted 90 cents from that for New Mexico to show that location differential for New Mexico.
   Q. So you are assuming that New Mexico, well, you are assuming New Mexico milk was delivered into New Mexico?
   A. Yes, that's the assumption I made.
   Q. Okay. So for New Mexico, you are aware a lot of that
milk's delivered out-of-state, correct?

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

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

    A. Yes, I think it would.

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

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

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

    A. I assume it would be the same methodology.

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

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

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

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

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

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

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

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

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

Q. Okay. Who do you report to?

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

Q. Okay. And who does he report to?

A. David Ahlem, CEO.

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

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

Q. Well, tell me what your responsibilities are.

A. I basically, I -- there's a lot of things I do. I work with our sales team, risk management, business analysis, and our other senior leaders. I try to improve the quality of our business analysis. I work with our sales team to help them understand markets and to look at markets differently, provide them with, you know, economic data prices, risk management, I talk with our, my boss, the Risk Management Manager a lot about
hedging strategies and that sort of thing. So I have a hand in a lot of different areas of the company. Probably the area I don't have a hand is kind of like the technical, operating the plant, you know, those sorts of, you know --

Q. All right.
A. -- technical functions.

Q. But you are providing sort of analysis to persons in the company who are both responsible for milk procurement and for product sales. Is that fair?
A. Yeah, I interact with all those different teams.

Q. When you are talking about hedging, I assume you are talking about hedging in terms of hedging the products that the company makes; cheese, whey, etcetera?
A. Yes, when I am working with the risk management side, it is primarily from hedging with the company.

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

Q. Do you know anything about the Grade B plan that was just offered to Hilmar producers?
A. I know a little bit about it.

Q. Can you tell us about it?
A. As far as I know, that producers have a choice, if they choose to, they can put some milk into Grade B, put their milk
into Grade B.

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

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

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

A. I just know the very basics.

Q. Did I represent the basics about right?

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

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

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

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

A. I believe so.

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

A. I believe each producer has a certain amount that they can produce in their contract, and that's basically all I know.
And they are technically not supposed to go over that.

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

A. Are you asking for a specific number?

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

A. Absolutely.

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

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

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

A. I see that.

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

So what happened this spring?
A. Are you talking, the apparent conflict you are bringing up in terms of the amount of milk that was produced relative to our contract? Is that what you are getting at?

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

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

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

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

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

A. We were able to deal with the problem.

Q. Recently, or at the beginning of your testimony you testified you had an order from a fluid milk plant in
California just recently, correct?

A. Correct.

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

A. We do not.

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

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

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

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

Q. Did you charge a give-up cost?

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

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

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

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

A. Yes.

Q. Do you have that information?

A. Yes, I did look that up. It was for the year 2007
going to approximately September, October. It was, we gathered that information prior to the October 2007 CDFA hearing.

Q. So that was in, sometime the first nine months of 2007?
A. Something like that, yeah, close to it.

Q. Yeah. Do you know -- do you know what impact that those sales had on your weighted average cost of milk for the year at Hilmar?
A. Probably a small impact, I would say. I think the larger problem, again, was just the high 4b price at the time, that we were having trouble making a return on it.

Q. Let me ask you, talk a little bit about hedging. You have, you devoted a fair amount of your testimony in Exhibit 98 and your charts 99 to commentary about the ability to hedge on a producer, about producers to hedge in California. Is that, did I understand it right?
A. Correct. Yes, I think I might have got a little bit wordy with my testimony.

Q. Wordy helps to understand.
A. Yes.

Q. Okay. So I think you have indicated this morning, you don't have much to do with procurement of milk and hedging with your producers in your job, correct?
A. Correct. But a lot of the principles I think go across understanding how these instruments work. Again, I'm not an expert in producer hedging, but I felt that the whole argument
that, you know, only -- only using Class III in California, I
thought it was fairly simple for me to go at.

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

Q. Okay. But have you ever tried to actually execute a
hedge with a California dairy farmer?
A. I have not.

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

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

Q. So if a California dairy farmer wanted to hedge, they
would have to use some basket of other products to attempt to
mimic their price?
A. Yeah, they would have to use the instruments available
on CME, which predominantly track the NDPSR prices, and those
prices go into making the Class III and IV futures products.

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

You spent a lot of time with Mr. Vetne on Friday
identifying, I think you called them converters, customers for
bulk cheese who would take the bulk product and process it,
convert it into a consumer product.

Do you recall that?

A. Yes, I recall that.

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

A. That is correct.

Q. Okay.

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

MR. BESHORE: I can work my way back.

JUDGE CLIFTON: Okay. Let's off record for two minutes.

Everybody just stretch.

(Whereupon, a break was taken.)

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

Mr. Beshore?

MR. BESHORE: I would like to ask that these two, one-page
documents be marked as the next two consecutive exhibits, which
I believe would be 103 and 104. I would ask that the one
titled Exhibit 99 Figure 5, CA Basis Data Points be 103, and
the one that's Exhibit 99 Figure 5 PA Basis Data Points be 104.

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

MS. ELLIOTT: That's correct.

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

MR. BESHORE: It does, yes.

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

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

JUDGE CLIFTON: And 104 will be Pennsylvania.

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

BY MR. BESHORE:

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

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

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

A. My Exhibit 9?

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

A. Okay.

Q. Exhibit 103 simply took the basis data points
underlying Figure 5 and plotted them.

Do you see that?

A. Okay.

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

A. Correct.

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

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

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

A. Yes.

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

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

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

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

Q. I'll take that question.

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

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

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

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

A. Well, I --

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

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

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

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

Q. Okay. So in Figure 6, again, average price spread
versus Class III showing California ranked first. You ranked California first in its lack of deviation from Class III, by counting plus one and minus one as the same value, correct?

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

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

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

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

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

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

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

Q. So if you look at Exhibit 104 then, just to -- just to illustrate the difference between on Figure 5 or Figure 6, I guess, California versus Pennsylvania, for instance. So, Pennsylvania, on Figure 5, shows as about 50 cents higher than
California. Is that not --

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

Q. Right.

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

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

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

Q. Right.

A. Yes.

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

A. Yes.

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

A. Yes, I believe so.

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

A. Could you explain that a little bit more?

Q. When a dairy farmer is looking at his basis for a hedge situation, if it's positive and negative, some of the time positive, some of the time negative, that's a much more difficult situation to deal with than if it's positive all the time. Wouldn't you agree?
A. Well, I think one of the things you would look at is
the relative volatility. For example, something could still be
largely positive, but if it's very volatile, for example, going
plus $5.00 to, you know, $1.00, to plus $1.00, that's still
quite a bit of volatility. So it can still be difficult to
hedge, even though the actual basis is above Class III.

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

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

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

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

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

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

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

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

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

A. Are you referring to like retail packaging?

Q. Yes.

A. No.

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

A. Yes.

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

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

Q. Can you name any of the smaller competitors?

A. One that comes to mind would be Farmdale.

Q. Okay. Any others?

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

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

    Do you see that?

  A. Yes, I see it.

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

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

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

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

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

  A. Yes.

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

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

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

  A. Oh, like itemize the different parts --

  Q. Yeah, without putting a figure on each, itemize it.
A. I couldn't be that specific. But I would say if you were looking at the CDFA cost studies and you looked at something like nonfat dry milk, they would list different cost of production. We would have some of those corporate allocations, energy, labor, all those sorts of things.

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

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

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

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

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

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

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

A. I believe we were not.

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

A. No.

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

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

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

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

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

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

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

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

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

Do you recall that?

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

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

A. I see it.

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

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

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

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

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

A. I couldn't -- I couldn't tell you that number. It is, when there's three variables working together in a mathematical equation, it's kind of hard to parse out one specific factor to
say this is how much lactose was going into premiums.

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

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

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

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

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

A. I believe so.

Q. Vintage cheddar, white and colored?

A. Yes.

Q. Milled, curd cheddar, white and colored?

A. I believe all of it is.

Q. White cheddar for export?

A. Yes.

Q. Reduced fat cheddar?

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

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

Q. Colby jack?
A. Yes.

Q. Reduced fat Colby jack?
A. Yes.

Q. Monterey jack?
A. Yes.

Q. Monterey jack with jalapeno peppers, pepper jack?
A. Yes.

Q. Reduced fat Monterey jack?
A. Yes.

Q. Low moisture part-skim Mozzarella?
A. Yes.

Q. Muenster?
A. Yes.

Q. Queso Quesadilla?
A. Yes.

Q. Queso Acedero?
A. Yes.

Q. And other specialty cheeses upon request?
A. No. Just kidding, yes.

Q. Okay. Have you indicated what portion of your production at the plant in California is exported?
A. I believe it is something around ten percent, something in that general area. I think I may have that in there.
Q. Okay.

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

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

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

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

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

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

A. No, I couldn't tell you. I can say that it is a mix of Holstein, crossbreeds, and Jersey. I believe something like 30 percent of the milk is from Jerseys, so I think it would be a
higher component, a higher component milk supply than you may typically otherwise find.

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

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

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

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

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

A. Correct.

Q. Okay. So if my -- can you confirm my arithmetic, which is sometimes right and sometimes not on these things, that that
is about 5 billion pounds a year, working off of last year's California production of 42 billion pounds?

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

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

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

Q. I'll take pounds per day.

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

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

A. That would get you in the ballpark.

Q. Does that sound about right?

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

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

JUDGE CLIFTON: Who next has cross-examination for
Mr. DeJong?

CROSS-EXAMINATION

BY MR. VANDENHEUVEL:

Q. Rob Vandenheuvel, Milk Producers Council.

Good morning, Mr. DeJong.

A. Good morning.

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

A. Yes.

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

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

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

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

Q. So this table doesn't measure the same producers are
producing 1.3 percent more than they were producing last year, but could be a different population of producers, and could, in fact, be a larger population of producers?

A. That very well could be true.

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

Do you see that?

A. Yes.

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

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

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

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

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

A. That's what that particular sentence is referring to.
Q. Okay. Thank you. Page 8 of the written testimony, about two-thirds down the page there is a sentence that reads, "this can happen more efficiently and effectively without regulatory involvement in minimum milk prices".

Do you see that sentence?

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

Q. No problem.

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

Q. Absolutely.

A. Okay. I'm ready.

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

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

Q. So taking that to -- to an illegal -- illogical
conclusion having -- an illegal conclusion -- taking that to
the most extreme example, having zero minimum price would,
Hilmar Cheese Company believes would still allow a functioning
marketplace?

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

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

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

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

A. It is my understanding how the pool works, that money
tends to flow from the higher class utilizations to the lower class utilizations to equalize and create a blend price for the producers.

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

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

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

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

A. Yes.

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

A. Yes.

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

Do you see that?

A. Yes.
Q. Okay. On the bottom there is a cooperative pool manufacturing plants, and there's a list of six plants there. Some of them are Darigold, which is another name for Northwest Dairy Association, that's their label, correct?
A. That's how I understand it.
Q. And then there's three other producer-owned cooperatives there. I believe in your testimony last week you made some reference to the last column there, the months associated with the order, specifically with those cooperative-owned plants?
A. Yes.
Q. And it looks like the months of February, April, October, and November were months where we saw quite a bit of milk that was not associated with the Order for each of those plants?
A. I believe that's correct.
Q. Are you aware that in each of those four months the PPD, the producer price differential, for the Federal Order 124 was negative?
A. That would not surprise me.
Q. And so by not pooling the milk, it looks like there were, from that accounting right there, there were three cooperative-owned plants that chose not to pool milk during some or all of those four months. Are you aware of the products that those manufacturers make, those three
manufacturers, and that is the Columbia River Processing in
Boardman, Oregon; Darigold in Sunnyside, Washington; and
Tillamook, in Tillamook, Oregon?

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

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

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

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

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

Q. So during those three months, when those three
producer-owned cooperatives, or during those four months when
those three producer-owned cooperatives chose not to pool their
milk, and I see there's one exception, but otherwise they all
did the same thing, that doesn't mean that they were
depooling their milk in order to pay producers below minimum prices, but rather could very well be to escape that pool contribution that would have otherwise been required?

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

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

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

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

A. Yes.

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

Do you see that?

A. Yes, I do.

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

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

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

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

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

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

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

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning. Chip English.

A. Good morning.

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

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

A. That is how I understand it.

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

A. Correct.

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

A. Correct.

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

A. Correct.

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

A. Correct.
Q. That's all I have, your Honor.

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

CROSS-EXAMINATION

BY MR. BESHORE:

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

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

A. Yes, I believe they do.

Q. Okay. Do you know how many?

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

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

A. Not necessarily. I think it depends a lot on the market. For example, you could have somewhere in, I don't know, somewhere that gets, somewhere like New York or further East that has a lot in premiums that they can have a lot of variability in their milk price versus Class III, even though they are on the, in the Federal Milk Marketing Order. So it
depends a lot, I think, on how much Class III is in that market in the FMMO, which would determine how well the Class III hedging mechanism works.

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

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

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

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

Q. So one of the challenges in hedging in California, as well as the Federal Order system, is that you have the regulatory instability versus the Class III price in the
Federal system. Wouldn't you agree with that?

A. State that one more time?

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

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

Q. Could you look at Figure 5 of 99 again with me?

Quickly. And, no, I'm sorry, Figure 13, I'm sorry.

A. This is the graph that I revised.

Q. Which is now 102, correct?

A. Yes.

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

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

Q. Well, my -- my problem is with the title. It says being paid under Class III, and what you are comparing here, as
I understand it from your testimony, and even from the rest of
the narrative on the document, is you are comparing an all milk
price, which is a blended price, to a, you know, statistical
blended price under the Orders. There is no Class III per say
in either of these; isn't that true?
   A. It's an inferred number.
   Q. Well, how do you infer a number when you have got
different utilizations that aren't even, you know, reflected on
here?
   A. Again, I would say that, that it is reflective of
what's happening in the area. And I think it is a good proxy.
I think if you would actually go to those areas and see the
mailbox prices that they would be paying under Class III.
   Q. Okay. But the title is not correct. It doesn't show
whether or not the producers are being paid under Class III,
because Class III is neither the X nor the Y of the equation;
 isn't that correct?
   A. You may be technically correct there.
   Q. Okay. Let me ask just one other area, I think. In
terms of cheddar, cheddar cheese in California. You say on
page 24 of Exhibit 98, "a large majority of our cheese leaves
the state for marketing population centers to the East", and of
course, you know, you are talking about your, that would
include your cheddar production, correct?
   A. Correct.
Q. And the CDFA figures now for cheddar production, or for cheddar, for, the CDFA cost survey for cheddar, which I think involves four plants, no longer gives volume information because it would tend to reveal proprietary data. Are you aware of that?

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

Q. Okay. But six or eight years ago when there were, they did publish volume information on their cheddar cost study. Do you recall that?

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

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

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

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

A. I don't remember the particular per capita consumption
for cheddar. I believe it is in the --

Q. 9 pounds or so?

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

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

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

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

A. That is possible.

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

A. I wouldn't be surprised.

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

A. Yes.

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

A. Leaving California?

Q. Yeah.

A. Yeah, it can happen.
Q. Right. Have you ever -- and are you aware that there's been testimony that milk has left California, I think maybe you have even indicated -- milk's left California when there's been capacity available in the state, there was a willing capacity. Do you recall that?

A. Did I say that in my testimony?

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

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

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

A. They could offer milk?

Q. Yes.

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

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

A. I guess so.

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

A. We would always try to go to the nearest plant that would be willing to take it, to minimize transportation losses.
That would be the financial incentive to minimize the loss of --

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

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

Q. Okay. Thank you. Nothing further.

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

(Whereupon, a break was taken.)

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

CROSS-EXAMINATION

BY MR. MILTNER:


Good morning, Mr. DeJong.

A. Good morning.

Q. I have just a couple questions here.
My understanding is that Hilmar produces somewhere in the neighborhood of six different whey products; is that correct?

A. That sounds about right, if not more.

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

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

JUDGE CLIFTON: Are you looking at your testimony?

MR. DeJONG: Yes, I am.

JUDGE CLIFTON: What page are you on?

MR. DeJONG: Page 1, second paragraph.

JUDGE CLIFTON: Thank you.

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

BY MR. MILTNER:

Q. You produce no straight dry whey?

A. Correct.

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

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

A. I have not seen them.

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

A. I don't really think there is.

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

A. No, I would not share those.

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

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

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

A. Yes, particularly when dry whey prices are high
relative to products we are actually producing, in which I recently was naming for you.

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

A. Yes, that is a very important distinction.

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

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

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

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

DIRECT EXAMINATION

BY MR. VETNE:

Q. John Vetne, representative for Hilmar Cheese.

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

A. Yes, Mr. Beshore mentioned that.

Q. Okay. Is it true that in California, milk producers,
dairy farmers, have a chance only once per year to decide to
make an election for a full 12 months whether they no longer
want to be considered market grade Grade A producers, and
instead, be what we call Grade B, which is a producer who is
not Grade A? Once a year they have a choice, correct?

A. That is correct.

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

A. Correct.

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

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

Q. Prior to the beginning of the calendar year?

A. Yes.

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

A. Correct.

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

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

A. Both quality standards are very high.

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

A. That is right.

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

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

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

A. That is correct.

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

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

A. Correct.

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

A. Correct.

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

A. Yes, it can be distributed that way.

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

A. Absolutely.

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

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

A. I believe that is right.

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

A. Yes.

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

A. Correct.

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

A. Yes.

Q. And when lactose comes to a plant to be dried, it comes in at a substantially lower nonfat solids 3 or 4 percent,
Q. Okay. It takes a huge amount of more energy to convert the incoming lactose to a dry product than it does to convert skim milk to a dry product?
A. Yes, that is right.
Q. Mr. Vandenheuvel asked you a question, to which you responded affirmatively. And when the, in California, when the Class 4b price is less than the overbase price, or less than whatever mixture of overbase and quota milk your producers have, you receive a pool draw, Hilmar receives a pool draw. Do you recall that question?
A. Yes.
Q. And the question stopped there. But let's follow the money. Do you get to keep that?
A. Absolutely not. It's passed on to the producers.
Q. Okay. So for the pool draw you serve as, it is passed on to the producers by mandate of regulation. You can't keep it; is that correct?
A. Correct.
Q. Okay. So you serve as a convenient conduit for the funds to get to producers, correct?
A. It can be described that way, yes.
Q. Okay. It's producers' money, not yours?
A. Yes.
Q. And then finally, you were asked some questions, well, not finally, sorry. Let's go back to Exhibit 102, and you were asked some questions that suggested maybe you have the wrong title in the document. This is an examination of prices paid to producers in the areas of the country that are under Federal, subject to Federal Milk Marketing Orders. You referred to, I think when you described your payment formulas to patrons of Hilmar, that you have a market basket of factors that go into determining the pay price, correct?

A. Yes.

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

A. Correct.

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

A. Yes, in the all milk price.

Q. Okay. And then the all milk prices are further adjusted to prove to reflect their marketing costs for
producers, correct?
   A. Correct.

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

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

   Q. Okay. All right. And finally, you were asked some
questions about, you said you monitor mailbox prices of
competitors.
   A. Yes. Our field staff regularly gathers competitor's
actual pay prices and monitors them against our own pay
formulas to make sure that we are competitive.

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

   Q. Okay. That's all I have on redirect, your Honor.
Thank you.
JUDGE CLIFTON: Are there any other questions before I invite USDA's questions? Yes, Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:

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

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

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

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

   A. Define primary?

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

   A. Sorry --

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

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

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

A. Something around there.

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

A. Yeah, it would be --

Q. Roughly?

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

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

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

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

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

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

A. Yeah, they are some of those processes.

Q. Okay. So after, then you have the liquid with the
about 3 percent lactose in it, correct?
   A. Yes.
   Q. Okay. Does the whey, the other part of that filtration process that's giving you the whey protein isolates and hydrolysates and that sort of thing?
   A. Yes.
   Q. Okay. Back to Exhibit 102. If there's a negative PPD in the, in the Order, in any of these Orders during those periods of time, I assume that pushes the, pushes the price down.
   A. A negative PPD would probably have some effect on that.
   Q. And there were negative PPD's in these Orders during some of these months, correct?
   A. That wouldn't surprise me.
   Q. Now, I think you told Mr. Vetne that the zero line was the Class III value?
   A. Well, it -- it is, the zero line would be, well, it's implied Class III value and --
   Q. Implied Class III value you are saying?
   A. Well, again, I'll walk through it. It is the NASS all milk price, which is a price at test, and it subtracts the Class III at test with the PPD. So --
   Q. Plus or minus the PPD?
   A. Yeah. If the PPD, you would still add it regardless, even if it was negative.
Q. Okay. So then zero is just a relationship, I mean, it doesn't have anything to do with the Class III price per se, it's a relationship between the all milk price and the Class III plus PPD.

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

Q. You imply that from the data?

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

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

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

Q. Okay. Thank you.

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

CROSS-EXAMINATION

BY MR. FRANCIS:

Q. Thank you. Will Francis, USDA.

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

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

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

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

   A. Did you have specific questions about it?

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

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

   Q. Okay. Maybe we can just explore that a little more.

   When we talk about Dalhart, is that, what's the business relationship? Is it a separate entity or is it a subsidiary or what's the business relationship, if you know?

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

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

   A. I have heard of that. I'm not intimately familiar with
how that system works.

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

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

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

A. For Grade A milk, that is accurate.
Q. Okay. But for non-Grade A milk, how would that work?
A. Well, the Grade B milk, I don't think there would be a pool obligation. But on the other hand, I don't know how many buyers there are for Grade B milk. It is very important for a lot of different manufacturers to have that Grade A milk.

Q. Okay. So is Grade B priced and pooled, or prohibited from being priced and pooled under the current California state system?
A. It's my understanding that it cannot be pooled under the California state system.

Q. But, and again, I apologize if I misunderstood, but you mentioned that there's no quality difference between the current California Grade A and what you called California Grade B. And so is that, and I, for lack of a better word, is that a way for, W-A-Y, for the handlers in California to be able to sell under class?
A. Yes, to the extent they can. Like I said, a lot of products it is very important to have a Grade A designation, so you can't use that for everything. But it does, but not a lot of people do it. One, it's not Hilmar's decision whether that milk is Grade A or B, it is the producer's decision. And second, when they do it, they would lose their quota after so many days, so it's a very small amount of milk.

Q. Okay. So it is tied to the quota holders?
A. Yes, it is.
Q. Okay. And that was another question that we had is related to the decision to make that choice of moving from Grade A to Grade B. Is it the individual producer's choice, and do they report that to the cooperative, or to the state, or to both?

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

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

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

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

A. Uh-huh.

Q. -- it's really kind of focused on that "willing buyers". Is it because there was a strict limit on capacity
that plants were full they just couldn't take one extra load, or was it primarily driven because the price was not attractive to bring that into a California plant?

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

Q. Okay. But it could be both?

A. It could be both.

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

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

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

A. In Dalhart.
Q. Okay. So that's relative to --

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

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

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

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

A. You mean for Hilmar?

Q. Yes.

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

Q. Okay. We can follow up.

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

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

JUDGE CLIFTON: Okay. But what if he was talking about Texas? What if he was asking you, if it's not California milk
that is bought as a spot load in Texas, then where does the milk come from, and are they allowed to buy it at below class price in Texas?

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

BY MR. FRANCIS:

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

A. I don't remember saying --

Q. I may have misheard it.

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

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

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

REDIRECT EXAMINATION

BY MR. VETNE:

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

A. Okay.

Q. Okay? As I understood your answers, one decision
making consideration for Hilmar on whether to receive milk that's offered, it is not part of your regular supply, is the volume of cheese that you plan to produce under current contracts for sale to your buyers, correct?

A. Yes.

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

A. Correct.

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

A. Yes.

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

A. Yes, that is one of the factors.

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

A. Yes.

Q. In fact, would you agree with me that it would be foolhardy to be willing to take milk at regulated prices when
the regulated prices are set at a level that's greater than you can recover in the marketplace for cheese and whey products?

   A. Absolutely.

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

   A. Yes.

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

   A. Yes.

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

   A. Yes.

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

   A. Absolutely.

Q. Okay. And you looked at, for the regulated price component at that time, the regulated price component was such that it would have cost you, or did cost you, more in the regulated price than you could recover from the market because of the whey factor?
A. Yes, for our whey stream, that is correct.

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

A. Yes.

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

A. Yes, I only meant Hilmar milk.

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

A. Yes.

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

A. Yes.

Q. So it wasn't -- it wasn't the occasional load of California you were talking about, it was the regular ongoing
supply to the Hilmar Dalhart plant of milk from its regular
producers and from other marketers who brought milk, correct?

   A. Correct.

   Q. Thank you, your Honor.

   JUDGE CLIFTON: You're welcome.

   Mr. Beshore?

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

   REcross-examination

   BY MR. BESHORE:

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

   A. No.

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

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

   Q. Who are not pooled?

   A. Who are not pooled.

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

   A. Yes.

   Q. Okay. Thank you.

   JUDGE CLIFTON: Mr. Francis?

   MR. FRANCIS: Will Francis, USDA. I had one other
clarification that I missed earlier, I apologize.

REEXAMINATION

BY MR. FRANCIS:

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

A. Page 4, what line?

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

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

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

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

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

Q. Thank you.

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

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

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

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

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

JUDGE CLIFTON: Very well.

MR. VETNE: He might come back.

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

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

Mr. DeJong, come back.

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

JUDGE CLIFTON: And you are?

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

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

      MR. DeJONG: I have not.

      MR. VETNE: You are awesome. Thank you.

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

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

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

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

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

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

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

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

      MR. ROSA: Well, I don't know what your lunch hours are
here, so I, if you can tell me what the agenda looks like.

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

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

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

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

JUDGE CLIFTON: And your first name is spelled how?


JUDGE CLIFTON: All right. And your last name?

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

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

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

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

MS. MARTIN: Yes, it is.

JUDGE CLIFTON: I thank you very much.

Would you like to testify before lunch or after lunch?

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

JUDGE CLIFTON: All right. I think that might be a good
plan. If you will be seated, I'll find out who else is here who expects to testify today.

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

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


JUDGE CLIFTON: Jimbo?

MR. AHLEM: Jim.

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

MR. AHLEM: I can wait until after lunch.

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

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

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

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

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

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

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

JUDGE CLIFTON: All right. Very fine.

MR. MALDONADO: Thank you.

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

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

Mr. Rosa, would you come to the witness stand, please?

Please make yourself comfortable and make sure your mouth is fairly close to the microphone. I'll swear you in in a seated position.

MR. ROSA: Okay.

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

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

MR. ROSA: I do.

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

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

JUDGE CLIFTON: And I see that you have a prepared
statement. Do you want us to make copies of that so that they can also be made an exhibit or do you want to use it simply for your own guidance in stating your testimony?

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

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

MR. ROSA: Yes, I do.

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

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

While my brother and I were in college, my father made us an offer. If we agreed to return to the farm and provide
labor and management for five years, he would work us into ownership of the herd. We all upheld our agreement, and on January 1, 1998, my brother and I purchased our parent's portion of the herd and leased the facility.

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

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

Our family was at a crossroad. My brother and I met on this, discussed it several times, and we concluded that we had three alternatives. The first alternative was to leave the State of California, where our family had dairied for three generations and over 50 years. This would allow to us the get a fairer price for our milk relative to California's pricing
structure. The problem was that we would have to leave behind our friends and family, and our spouse's friends and family, and a community that we had been a part of for over 50 years.

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

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

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

Price alignment for hedging purposes. In 2009, my
brother and I began using options in our milk marketing strategies. We are continually trying to protect prices based on the Federal Milk Marketing Order, yet we are in the California Marketing Order. This tends to add basis risk in an environment where we are trying to mitigate risk.

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

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

In closing, I believe that the time has come for California to move to a Federal Milk Marketing Order. I believe it will allow producers to hedge their production properly, it will bring all dairy producers nationwide into
pricing alignment, and it will foster innovation by small
producer distributors. Again, thank you for the opportunity to
voice my thoughts and represent my fellow California dairy
farmers.

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

CROSS EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

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

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

Q. And how does that, into what product?

A. Fluid milk and ice cream.

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

A. Our dairy farm is in Hanford, California, and our
processing facility is in Tulare, California.

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

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

Q. Why can't you hedge with oranges?

A. We -- it's different.

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

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

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

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

MR. ROSA: Okay. Our dairy farm is M.F. Rosa Dairy, R-O-S-A, that was my father and my grandfather's initials. And our processing entity that my brother and I started is called Rosa Brothers Milk Company, Incorporated.
JUDGE CLIFTON: Who has the next questions for Mr. Rosa?

Let's see, we have got both, Mr. Vetne, if you would begin, we have a number of people that have questions.

CROSS-EXAMINATION

BY MR. VETNE:

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

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

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

A. Correct.

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

A. That is one reason, yes.

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

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

Q. Okay. So the first reason, then, would work for risk management purposes, just as well if pricing in California tracked Federal Order pricing at whatever level relationship as
long as it went up and down at the same time, correct?
   A. I don't understand that.
   Q. Okay. You've indicated it doesn't track Federal Order pricing. It would track Federal Order pricing if all California prices were a dollar more than Federal Order pricing, the track would be the same. The level would be different, but the track would be the same, correct?
   A. Right.
   Q. Okay. The second reason you gave was simultaneous market signals to --
   A. Correct.
   Q. -- increase or reduce production, correct?
   A. Correct.
   Q. And that is, that's essentially looking at the same thing that the California system CDFA pricing doesn't track Federal Order pricing.
   A. Yes.
   Q. Correct?
   A. Yes.
   Q. Okay. And so that, similarly, would be resolved if California, whether State or Federal regulation, tracked, followed the up and down movements of the Federal Orders, correct?
   A. Correct.
   Q. Okay. And one of the, let me see if this plays a part
in that. As I understand it, the California Class 2 prices are announced for two month periods, so they don't change from month to month like the Federal Order system do. Have you, or did you intend to include that failure to track as part of the tracking problem with priority one and priority two?

A. No.

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

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

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

A. Yes.

Q. -- the plant?

A. Yes.

Q. Thank you. Thank you very much.

CROSS-EXAMINATION

BY MR. ENGLISH:

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

A. Correct.

Q. Is that something that you're hoping if proposal, if
Proposal 1 were adopted, that you would be able to take advantage of?

A. Yes.

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

A. Uh-huh.

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

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

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

A. Correct.

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

A. Correct.

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

A. Correct.

Q. So you would continue, I mean, obviously you hope to
grow, but nonetheless you would continue to have a very
significant volume of your bulk be shipped to your cooperative?
A. Correct.
Q. And do you own any quota?
A. Yes.
Q. Okay. So you want to have an exemption on your
processing of about 350,000 pounds, and then you would
nonetheless ship to Land O'Lakes and get a quota price on some
of your milk, correct?
A. Correct.
Q. And otherwise, you would get the non-quota Federal
planned on the rest of your milk, correct?
A. Correct.
Q. I have no further questions.
JUDGE CLIFTON: Who would next like to ask questions of
Mr. Rosa? Mr. Francis?
CROSS-EXAMINATION

BY MR. FRANCIS:
Q. Will Francis, USDA.
Mr. Rosa, we want to thank you very much for appearing
at today's hearing. It's important for us to hear directly
from the farmers such as yourself, and I just wanted to express
our thanks for coming in. I do have just one question about
the operation. And so you have a dairy farm operation, and it
is a separate business structure that you and your brother own
for the processing side of the business?

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

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

A. Yes.

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

A. That would be very safe.

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

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

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

JUDGE CLIFTON: Are there other questions there Mr. Rosa?

Mr. Rosa, is there anything would you like to add?

MR. ROSA: No, not at this time.

JUDGE CLIFTON: Thank you very much. You have contributed a great deal. We appreciate it. Don't leave yet.

Mr. Francis?

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

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

MR. ROSA: That is correct.

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

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

MR. FRANCIS: Thank you. I appreciate it.

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

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

MR. BESHORE: I do. I probably didn't, but I do want to
JUDGE CLIFTON: Let's see. I think we identified three of them today, 102, 103 and 104.

MR. ENGLISH: 102 has been admitted.

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

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

MR. ENGLISH: I would love to ask questions.

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

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

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

MR. BESHORE: I understand.

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

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

MS. MARTIN: I am.

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

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

MS. MARTIN: I do.

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


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

MS. MARTIN: For my own guidance.

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

MS. MARTIN: Yes, it does.

JUDGE CLIFTON: All right. Very good. You may proceed
with your testimony.

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

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

I have to admit, I was not going to come here to
testify for these USDA hearings. I had told my story so many
times to CDFA. I e-mailed Secretary Ross almost weekly. I
helped organize the protest in Sacramento in September and
October of 2012. A large group of us organized hundreds of
dairy farmers united together to plead with the CDFA for us to
be paid what the other dairy farmers in the nation were being
paid, or at least closer to it. We were begging to have
somewhat of an even playing field.
California's cost of production, on top of all of the environmental requirements and fees were killing us. While we, for years, have been paid an average of $1.80 less per hundredweight of milk than the rest of the states. I spent so much time --

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

MS. MARTIN: Than the rest of the states.

JUDGE CLIFTON: Than the rest of the states.

MS. MARTIN: Yes, on average.

JUDGE CLIFTON: All the other states other than --

MS. MARTIN: In the Federal Milk Marketing Order.

JUDGE CLIFTON: Thank you.

MS. MARTIN: I spent so much time fighting then. I spoke out on social media; I vented on my blog; I shared our very personal plight, telling our whole story. It was a story that was the same as many other dairy farmers in the state. I shared my story with anyone who would listen. All we got from that time spent, that time away from our farms, was basically nothing. We were thrown a couple bones from CDFA, but nothing substantial. Only some tokens, hopefully to keep us quiet until things leveled themselves out again. The problem is, things didn't level out. The downturns were harder and longer, the upturns were too short to get any momentum for us to financially heal. I gave up hope in CDFA completely. I
stopped sharing my story with them. I mean, if they could
watch our dairy industry lose 450 dairy family farms from 2009
to 2012, with still many more continuing to exit, for them not
to think that was a crisis, I don't know what else is. I
wanted to scream at them for not realizing, or even caring,
that there was something definitely wrong with our system.

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

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

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

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

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

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

I knew we had to do something different. We had to generate more income. We couldn't sit around and wait for the walls to tumble. I told my husband, Tony, that we should make
cheese. He thought I was absolutely crazy. But with some planning and pleading, as women can do fairly well, he got on board. I took $30,000 from the beef that I had raised and then sold, and we turned his 250-square foot office into a cheese plant. I sold my first cheese at the Hanford Farmers Market in August of 2010. Though my growth has been slow, it has been steady. I put everything -- I put everything I made from Dairy Goddess back into the plant.

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

I would do all of my processing in the middle of the night because I needed to make sure that I had enough hot water to compete -- that I had to compete with, with the dairy.

While growing that business, I still worked on the dairy and I was on a mission. I felt that if I was going to go down, it was going to be with my boots on, and my head up.

In October 2011, we had to file for Chapter 11 Reorganization. It was the darkest time in our lives. It was the hardest thing that we had ever done. I felt that it was going to be the end of our farm and Dairy Goddess. We had so many emotions at that time. You play the woulda, shoulda, coulda card, and you say it over and over again.
One emotion that I tried to fight was bitterness. I was so bitter with CDFA for sitting back and letting it happen. We were not the only farms that had to make that decision. That $1.80 per hundredweight difference than the Federal Order, $1.80 is what had led us to what we thought was our demise. Had we been receiving the same price as the rest of the Federal Milk Marketing Order, we would have avoided that filing.

I eventually put my bitterness aside and I replaced it with humility and gratitude. We were so very blessed that our creditors agreed to a plan, and our vendors, each one of them, carried on business as usual for the most part. Even in 2012 and 2013 when we were having difficulties with following the plan due to the high feed costs, they stood by us and remained patient. We put 110 percent into making our dairy and Dairy Goddess succeed. We wanted to fulfill our plan. We didn't want to disappoint our creditors who had so much faith in us.

We have often said that Dairy Goddess Farmstead Cheese and Milk saved our farm. Certainly not with its monetary benefits, but because we were thinking outside the box and trying so hard. Though its growth slow, it was moving forward. The last thing that I personally wanted to do in my 50's was to start a new business. I always envisioned that I would be slowing down by this point. That was not God's plan for us and that's all right. I am grateful for where it has taken us and I am grateful we are healthy enough to work so hard.
At the end of 2013 through 2014, milk prices improved. We were finally seeing $20.00 plus milk, but I wasn't happy. Fear set in again. I knew whenever the milk price was up, it was sure to come down, usually sooner than later. I heard from many in the industry that they believed that $20.00 per hundredweight would be our new norm. I didn't believe it for one minute. I wanted to sell it all right then and there. My husband, God love him, wasn't ready for that. He was scared of change and what a future would be without our cows and dairy farm.

At the first part of this year I decided, I personally couldn't take it anymore. The milk price was down again. I was managing the dairy farm, my husband was taking care of all the outside work, as well as helping me with Dairy Goddess when he could. I was busy growing Dairy Goddess. I can make product all day long, but I have to stay diligent in marketing and selling it.

I do not have a salesperson to do that. My daughter, Tara, manages Dairy Goddess operations full-time. I could not have continued if she had not made the decision to join us and build Dairy Goddess. She, too, has a passion for it and is committed to its success. With her diligence, we have grown enough to have hired a full-time production manager.

With an eye on building our brand and our business, in 2013 we started raising chickens for eggs. We have grown that
market and now sell Dairy Goddess Farmstead eggs. I want to continue that momentum and eventually sell whey-fed pasture pork and grass-fed beef.

As 2014 was ending, the milk price down, the dairy was a huge weight around my neck, and I just couldn't fight anymore to keep afloat. I wanted to stop the bleeding of the dairy farm and concentrate solely on Dairy Goddess. This, by no means, was an easy decision for me, but it was my intuition telling me.

My husband and I went to the California Cheese Festival in March, which was held in Petaluma. I usually don't attend these events, but I wanted to see some organic dairies while we were up there. I knew that many of these dairies would not be in existence unless they had converted to organic farming. I thought that might be a direction that we can consider, but one that my husband bah-humbugged about.

It was a successful festival for us, as we won the cheese monger competition. I was -- it was also in that road trip that we made the final decision to sell our herd and to try to keep 100 or so cows for Dairy Goddess. We cried a lot during this trip. We were scared and not sure if we could make it, but we were now both on the same page.

The summer, this past summer was a difficult one. My son, a vet student at Oklahoma State University, came home for his break and we had to tell him of our decision. He was
heartbroken, as he thought he would be coming home to the farm and working as a veterinarian when he was finished in May of 2017. My husband felt like he was failing him and he was having second thoughts.

I knew I had to really sell this organic thing more and more. As this was happening, we acquired 40 acres next to our existing farm. It has a small dairy barn and it was perfect to milk 100-plus cows and pasture them with our pigs and chickens.

Our full vision now is to have a farm stand and a destination dairy. We want to have a place where people can come to visit, purchase our products, and learn about farming. It will give us the opportunity to do what I love to do most. My passion is to educate those who do not know about agriculture. I want to give people the opportunity to see firsthand where their food comes from and to appreciate how much work it is. I want people to know how much we care for our animals, our land, and our environment. To accomplish this, I had to change what we were doing so that we would be able to sustain our family and our farm. So in July of this year, 900 of our generational Holstein cows left our farm. Most of those cows went to Nevada. This is what's happening in to the dairy industry in California.

Many dairies are selling, and these cows are leaving the state. I left that day the cows were leaving for scheduled sales meetings in Los Angeles. I left my very sad husband. I
hugged him good-bye, and I said this was for the best, we were making the right decision. Though in my heart at that moment, I wasn't sure. I managed to keep my brave face until I hit the road and I cried almost all the way to Los Angeles. I was sad and I was scared. All of those things that we wanted and planned were now in motion, and there was no turning back.

Fast forward to today. We, for the most part, are happy about our decision of selling the majority of our cows. Reducing the stress of the big dairy has helped us physically and mentally. We have just harvested our first transitional organic crop of hay. Its yield was better than expected. We have another two years to be fully certified organic. We are building up our pastures and we're working to complete our small barn. Of course we still have huge, huge challenges ahead. We need to lease or sell our large dairy facility and that's not easy with the current downturn. The last thing most want to do now is invest or expand into dairy.

The main thing, which was my goal, was to have more time to concentrate and grow Dairy Goddess. We have now expanded our cheese curd line and have been begun manufacturing cream. We know we must expand our brand in our business to make this all work. I pray everyday for continued health and guidance in helping me to achieve our goals. So this is my story, but I'm also here to share why I support California joining the Federal Milk Marketing Order Proposal Number 1 put
forth by the state's cooperatives.

I had never dreamed it so, but I'm also a PD, a producer-distributor. As a California producer-distributor, that definition being, a producer-distributor is a vertically integrated milk producer that also is his or her handler, owns, operates his or her own bottling or processing plant, and also markets and distributes his or her own products.

We are a unique group in California. Even though we are unique, we are thrown into the crazy California Milk Pooling system. Many processors have an auditor or even several auditors in-house to keep track of all that necessary paperwork that goes with reporting it to the pool. We are required monthly reporting to both the CDFA statistics and another form to the CDFA pooling. I am to the point where I feel like I need to hire an auditor, even for my very small operation. I prefer not to hire, have to hire an auditor for my small company. What I need is a salesperson to help me sell our product so I'm able to sell more and I am able to create more jobs. I want to be able to hire people to work and build my business. The money spent on bureaucratic paperwork takes away finances that will generate growth.

As a producer-distributor under the Federal Milk Pool Orders, each PD is provided a monthly pool exemption of up to 3 million pounds of milk as provided by his own production. The PD exemption under the Federal Orders has been upheld in the
courts and it is now settled law. We believe that exemption for producer-distributors in California is the right thing to do. It supports individual innovation, value added branding, new local product creation, sustainability, it keeps financial resources on the farm where they are needed. This is why I support the Federal Milk Marketing Order for California along with a milk price to dairy farmers being online with the rest of the nation.

I appreciate you taking the time to hear my story and I apologize for its length. Thank you.

JUDGE CLIFTON: Ms. Martin, I know what it has taken out of you just to share that story and I don't think it was long at all. I just can't imagine the work and the heartache that you have endured and I'm so glad you came to tell us about it.

Could you tell me the precise names of the business entities that you and your husband are involved with?

MS. MARTIN: Well, when we first moved up in 2006, it was Tony Martin Dairy. Since then, and with all of the changes and building our brand, he relinquished the name Tony Martin Dairy to Dairy Goddess Farms. That wasn't very easy, I don't think, wearing his T-shirt that says Dairy Goddess Farms on it, but he seems to manage it okay.

And from that -- so in 2010, Dairy Goddess Farms, Cheese, and in '12 milk was born. So officially as of today it's Dairy Goddess Farms and Dairy Goddess Farmstead Cheese and...
Milk.

JUDGE CLIFTON: Dairy Goddess Farms and Dairy Goddess Farmstead milk --

MS. MARTIN: Cheese and Milk.

JUDGE CLIFTON: Okay. And chickens?

MS. MARTIN: And chickens. So hopefully we'll just incorporate everything under the Dairy Goddess Farms brand.

JUDGE CLIFTON: I see. Very good. I note that much of your testimony was delivered with tears, and I appreciate that very much. Who would like to ask questions of Ms. Martin?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore. I just have one or two questions. Can you explain what you meant by, "sold your generational Holstein cows"?

A. Right. Since we were raising our -- I was raising the calves on our farm, and before that we, everything was remaining on our farm. So we had generations of animals that we had to watch leave. It was a really difficult day, as you can imagine.

Q. So how many generations had been in your family's farm?

A. So I am third generation in California, and my husband, so that was three generations.

Q. Right. I was actually talking about the cows.

A. Well, we had some that we varied on, so we had three
generations of that we have had, since, you know, lines of cows that we have brought through.

Q. So the same cow families and generations of cows have been carried on by your grandparents and your parents?

A. That's right.

Q. And you. Okay. Your family, you originally started dairying in Southern California?

A. That's right.

Q. Okay. And what year or about when?

A. So we were both born on, in Los Angeles County on our grandparents' farms in the '60's. And then in late '60's, '68, '69, my parents moved from Artesia to Riverside County. My husband's family also did the same, and they were in San Bernardino County, and that's where we raised -- there was a little different. We didn't farm the feed for our cows. So when we moved up in '06, that was another thing that we were going to, knew we needed to do to bring on to supply feed for our cows.

I actually worked, as my dad would say, "in town". Most of the Southern California, most of us did work in town. I was actually a travel agent for 20 years. And that provided the insurance for our families.

Q. Did your -- did your farm, had been in Southern California for years before the Gonsalves law?

A. Yes.
Q. Did you have some quota?
A. We did. We had to sell it during the downturn.
Q. Okay.
A. We were all in.
Q. Thank you.

JUDGE CLIFTON: Who next has questions for Ms. Martin?

CROSS-EXAMINATION

BY MR. FRANCIS:

Q. Thank you. Will Francis, USDA.

Express our appreciation again, for coming and telling your story. It's very important for us to hear that, and I appreciate you struggling through that. Thank you.

So just to talk a little more about your operation, and I'll ask the same questions that I asked Mr. Rosa. You have a separate operation now for your 100 cow herd and a separate business for your Dairy Goddess Farmstead cheese --

A. Yes.

Q. -- operation. And so relative to the farm, and again, we're not asking you to reveal any confidential proprietary information, but the threshold we use is $750,000 annually gross sales. So would your farm operation fall below or above that level, if you know?

A. It now falls below.

Q. Okay. So that would, by our definition, qualify as a small business. And again, on the processing side of the
business, I'm assuming you don't have more than 500 employees?

A. No.

Q. Not yet?

A. Not yet anyway.

Q. Okay. I had one more question. I want -- I want to just reference you to our Exhibit 1. And I can get you a copy of this, but it's important to understand, you read a definition for producer-handler, producer-distributor, and I'm just curious is that a current state CDFA definition?

A. No. That is, I don't know what CDFA's definition.

That is the Federal.

Q. Okay. What we're talking about for the purposes of this hearing is laid out in this Exhibit 1, and we don't need to get into a lot of detail, but I just want to point you to the relevant sections where the definitions that are being proposed for this hearing are located, and then it might be important for you and the others to take a look at that and see whether you would meet that definition or not.

And so we have numbers on here, and this is all published in the Federal Register. And so our Exhibit 1 is the Federal Register document from Thursday, August 6th, 2015. And on page 47212, it would be in the upper left hand corner, and if you look at that bottom of the middle column where it says 1051.10, that spells out the proposed definition of producer-handler, and that would be for Proposal 1, which is
offered by the three cooperatives.

The sort of companion language under Proposal 2 appears on page 47221, a few pages after that, also in the second column. So that was 47221 in the upper right hand corner.

A. Okay.

Q. Okay? And then there are additional proposals relative to producer-handler treatment, and that appears in proposal number 3, which is almost at the back. So if you go to the back page and flip over to page 47235 there's some language there that talks a little bit about quota, but that's quota as it applies to producer-handlers. And then proposal 4, while there's not specific language, it could be related to how operations are treated from outside the state.

So I'm not asking you to react to that right now, but we don't want people to be misled by the Federal Order coming in with a proposal to completely exempt producer-handlers or producer dealers, and also, based on the description of your operation, where the farm is a separate entity from the processing side of the business, it may not meet these definitions. However, as some earlier folks mentioned, there's a different threshold for an exempt plant. So if you are 150,000 pounds a month or less, you would be exempt. And also, just to clarify, exemption wouldn't necessarily mean you don't have to file paperwork. But we do --

A. Right. I understand. I understand.
Q. We do have folks in our Market Administrator offices that are very good at helping smaller operations work through the paperwork, so hopefully we wouldn't require all the paperwork that would lead you to hiring a separate person just to fill that out, but we're very cognizant of that, and we try to cooperate to make sure you do things the right way.

A. In life, there's paperwork. I understand that. And even the people that I do work with at the CDFA, I may have my frustrations, they are good, hard working people that do help us as well. So by no means are they in the office in the trenches actually helpful.

I think it's important, I mean, this is a relatively new change that we have made. And my heart is still very much a dairy farmer. I believe that I have seen so many dairy families lose everything, and I can't imagine not being, I mean, we have been paid, underpaid for so long. So I guess I'm probably, I told you my story, we are just a farmer and trying to piddle away to hold onto my little farm now. It was once a larger farm and those scars, those wounds are still really -- so I am here really for the California dairy industry. And to not be paid a fair wage for our milk that everyone else is providing, it really is a crime, and I think that crime needs to end.

And there's a beautiful part of being a PD, and I mentioned a little bit that, I, especially when we have a
thousand cows, I can make product all day long. But you don't do that, because you don't do it unless you have a market for it.

Dairymen have been a little bit, you know, I was very much a supporter of supply management. I mean, pretty much Business 101. You know, if you have too much of something, you are not going to get a great price for it.

My product is small, it's nitchy. I prefer, you know, staying within that line. People ask me, well, are you going after the big stores and this and that? I thought, I'm happy with my little nitch product for now. But -- but in any case, we, as dairy farmers here in California, we, you know, we have these large plants that need our product. We get going, supply management by the co-ops were put in, but -- but it always seemed it kicked in when it was too late.

I don't have real answers, other than I know that it was us dairy farmers that ended up taking the brunt of everything. The co-ops lose, we lose. Too much milk, our price goes down.

I never could figure out why or how we got to the point where we were actually paying for our milk to go to the plant that's going to process it and have all the power to make the money off of it. I mean, when our, when our milk left the farm, we didn't know what price we were going to receive for it. I mean, how did we get to this point? How did we, as
dairy farmers, allow some of these things to happen? I know it's too make milk, and have big dairies, and that's great. I'm all about people wanting to grow and ambition and strength. I'm all for our processors making money. I mean, when they are doing good, we are doing good. But I don't believe anything should, should happen at the demise of another industry. And to lose 450 dairy families that will never come back, nor mention suicides. Just in our county alone we had four suicides. DFA, Land O'Lakes had suicide hotlines. I mean, for goodness sake, if there's a freeze and some oranges are affected, it's all over the news. Yet, we have dairymen having hotlines set up because of suicide, and that's just a mere blip. Oh, those dairymen. You know, they make too much milk. Get more efficient. If I had heard that one more time, get more efficient, I was going to scream. I mean, how much more efficient do we get? And then we get efficient, and then they complain we have too much milk and we don't get paid for it anyway.

California's a tough, tough place to do business. Regulations, environment, and all we wanted to be is on the same page as everyone else. Why are we giving this California discount? How did it get to that point? Who made those decisions for us? What say, did we as dairy farmers, have? Well, we own the co-ops. Yeah, we do. We all said, we finally got to the point where we got some type of, you know, limits,
you know, where we had to buy base. Well, over that base, you are going to have to pay. I never really saw that kick in. Why did we have bases? Why -- I mean, why, basically one or two percent that were over that affects the whole price, so how did we get to the point, where, then we were getting, you know, $11.00, $10.00, $12.00 milk, when it was really just the one or two percent. So what about those people that were producing the one or two percent over? I wasn't overproducing over my base.

Our industry has a lot of problems, and I'm sure there's -- I don't think it's going to be, you know, Utopia with the Federal Milk Marketing Orders, they have problems, too. But at least we have a fighting chance and we're all on the same playing field. I think my rant's done.

JUDGE CLIFTON: Ms. Martin, when you talked about the base, that was a self-imposed limit on production?

MS. MARTIN: Through our cooperatives. So there was, base limits were put in, and if you wanted to produce more then you would have to buy base. But the idea was there, but we never really saw the full measure of what -- what we can. And again, if we in California have our pooling, you know, and that was kind of the attitude, you know, well, so what, I cut back milk, I make less, but then my neighbor is just full steam ahead and not doing it. You know, so there is some lack of unity.

During that time when we were actually protesting was
probably one of the only times that I have saw dairymen unite. And it really took that big of loss, that many that that made that happen. And as I still -- I -- dairymen are good people. Dairy farmers are good people. But what they want to do is they want to do what they do best. And that is, work on their farms, take care of their cows, and produce milk.

A lot of things got out of our hands because we're busy doing that. We don't have time to come to things like this and sit here from 9:00 to 5:00, with an hour lunch break. I really commend you all for doing it. But we have things to tend to. And when that happens, you lose control.

And I think, I remember my dad talked about the Gonsalves Milk Pooling Act, how happy, how relieved he was because he could just concentrate on making milk. Taking care of his girls, making milk, and there was a home, a place for his milk to go. And with that, I think ever since then we have became a little compliant. They know best. I'm just a farmer. What do I know? They are smart. They represent us. They are going to watch out for us. But that complacency led to a lot of our problems today.

JUDGE CLIFTON: What county is your 40 acre farm in?

MS. MARTIN: Kings County.

JUDGE CLIFTON: K-I-N-G-S?

MS. MARTIN: Uh-huh.

JUDGE CLIFTON: And the big operation, is it in the same
county?

    MS. MARTIN: Uh-huh, yes. They are actually right next
door to each other.

    JUDGE CLIFTON: Who else has questions for Mrs. Martin. We
thank you so very much for coming and testifying. I'm glad you
changed your mind when you had given up on trying to influence
government.

    MS. MARTIN: Thank you.

    JUDGE CLIFTON: I just -- you will take that with you, the
Federal Register and those are just the pages. Thank you very
much, very much.

    Did all of you hear that? Thanks everybody, she said.

    All right. So I need to know from the group, either we
should break for lunch. It's about 1:16, before we take the
next witness. It appears we need to -- so, please be back and
ready to go at 2:35. 2:35. Thank you.

    (Whereupon, the lunch recess was taken.)

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MONDAY, OCTOBER 26, 2015 — AFTERNOON SESSION

JUDGE CLIFTON: We're back on record at 2:36. I see that we have an exhibit being distributed. It's the testimony of Jose Maldonado. So if you have not -- yes, Mr. Maldonado, if you would come forward and be seated in the witness stand.

If you have not been at your place, and you need your copies, please raise your hand so that they can be distributed to you.

MR. ENGLISH: Your Honor, Chip English. I believe I have already done so, and obviously, left four for USDA, and one for you, and one for the court reporter.

JUDGE CLIFTON: Ms. Elliott, will this be Exhibit 105?

MS. ELLIOTT: That's correct.

JUDGE CLIFTON: Thank you. 105.

(Thereafter, Exhibit 105, was marked for identification.)

JUDGE CLIFTON: Now, I have placed Mr. Maldonado in the witness stand even though we have others to testify, because I understand he's got a short amount of time. Mr. English, at what point does he have to leave this room?

MR. ENGLISH: Today when we close. He's got until today. And we obviously, have the other witness through Hilmar, Mr. Ahlem, and there was a little arm wrestling and this is how it ended up, but we're hoping to get Mr. Ahlem on the stand as well today.

JUDGE CLIFTON: Very fine. That would be great. And
normally, Mr. Ahlem, I would have taken you first, but I want
to make sure we finish with Mr. Maldonado before we lose him.

MR. ENGLISH: And just to be clear, Mr. Ahlem has agreed,
although -- anyway, we are appreciative of trying to get this
to work this way.

JUDGE CLIFTON: Good, thank you. All right. Then, let us
do this, let me swear in Mr. Maldonado to begin with.
Mr. Maldonado, would you remain seated but raise your right
hand?

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

MR. MALDONADO: I swear.

JUDGE CLIFTON: Thank you.

MR. MALDONADO: You're welcome.

JUDGE CLIFTON: Would you please state -- I know you have
done this already, but I like to do this before every witness
testifies. If anybody wants to do a search of the transcript
for where a new witness begins, look for the word "spell" or
"raise your right hand" something like that. Would you state
and spell your name?

MR. MALDONADO: Okay. My name is Jose Trinidad Maldonado.

My first name is J-O-S-E, middle initial T, and last name is

JUDGE CLIFTON: Now, did you actually state your middle
name?
MR. MALDONADO: I did. Trinidad, T-R-I-N-I-D-A-D.

JUDGE CLIFTON: Terrific. Very good. All right.

Mr. English, you may proceed.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Thank you, your Honor. Mr. Maldonado has a five and a half page statement that's been marked as Exhibit 105, but you will quickly see that page 2 is some tables and graphs; page 3 is mostly tables and graphs. And obviously we are not expecting the court reporter to reproduce those, but obviously the exhibit will count for that.

I am going to ask Mr. Maldonado a couple of preliminary questions after he reads his first sentence, and then I'm going to let him give all the testimony, and then I'm going to come back and ask about the tables and graphs, rather than interrupt him. So if you would read your first sentence.

A. Sure. My name is J.T. Maldonado of Marquez Brothers International, Inc., based in Hanford, California.

JUDGE CLIFTON: It's a good thing that you have it in the record, because the court reporter will be able to look at it. I actually only heard every other word.

MR. MALDONADO: I got it I'll slow it down.

JUDGE CLIFTON: Thank you.

BY MR. ENGLISH:

Q. So actually go ahead and read the next paragraph slowly.
and then I'll ask some questions.

A. Very good.

Marquez Brothers International, Inc.'s primary business focus is in the manufacturing --

Q. Still too fast.

A. All right. In the manufacturing and distribution of Hispanic cheese products. Since the foundation of Marquez Brothers in 1981, we have grown our business as demand for cheese products has expanded. Our particular cheese market demand is highly price sensitive and very competitive. We are in the business of manufacturing Hispanic-style specialty products, such as Queso Fresco, cheese, creams, and drinkable style yogurts. The manufacturing of these specialty cheese products are highly labor intensive, lacking the economics of scale compared to large cheddar cheese automated plants that produce 40 pound blocks. Contrary to the testimony of previous witnesses, Hispanic variety cheese products manufactured in California do not enjoy any competitive advantage with the same products manufactured closer to main population centers of the United States. My testimony will present more detail of the cost challenges Hispanic cheese makers face primarily because we are located in California.

Q. At this point, with all the witnesses, we'd like to know a little bit more about you, for the record. So when did you start with Marquez Brothers?
A. 1997.

Q. Okay. And before that, what did you do?

A. Before that I worked in the grocery stores, and I was involved in electronic engineering, and also I had my own farm.

Q. And what do you do now for Marquez Brothers?

A. I'm the General Manager for Marquez Brothers.

Q. For the plant?

A. For the plant.

Q. Okay. All right. Please proceed.

A. With regard to the value of whey to plants of our size and product mix, Marquez Brothers reluctantly invested in a whey processing plant in 2004 in order to reduce the cost of disposing of the whey. This investment was -- this investment cost was more than any other investment Marquez Brothers had ever made. The investment decision was driven primarily by the rising environmental concerns with whey disposal and the cost of whey disposal, not the projected financial return.

Furthermore, Marquez Brothers is primarily in the cheese business, and investing in a whey plant was a necessary, but unwanted, investment decision outside of our core competencies.

With respect to making whey processing investments within the industry, it is generally acknowledged that a plant must produce at least 1.2 million pounds of whey per day in order to reach the economies of scale necessary for a whey plant investment to break even. Adoption of any sizeable 4b
milk price increase will result in not only small/medium size cheese manufacturers not able to recoup their investment, but the extinction of California small/medium size cheese manufacturers.

In California, cheese manufacturers have experienced regulated price increases which have presented challenges to small/mid-sized cheese manufacturers companies, specifically because of the limit on the value that can be derived from the byproducts side of the cheese manufacturing. For example, on the input side, a cheese plant will have milk input of approximately 12.3 percent solids, if you see Table 1.

Table 1 shows butterfat at 3.5 and solids not fat of 8.8. Total combined is 12.3 percent solids.

The output from the milk's 12.3 percent of total solids, approximately 48 percent of these solids stay with the cheese, and 52 percent of that go with the whey. See Table 2.

And graph 1 and 2, as well. It clearly shows how much of that butterfat and solids not fat, 3.15 percent of the butterfat stays with the cheese, 2.75 percent of the solids not fat stays with the cheese of a total of 5.9 percent of total solids end up with the cheese.

On the whey side, .35 percent of the butterfat goes to the whey, and 6.05 percent goes to the other, solids not fat go to the whey for a total of 6.4 percent total solids end up at the whey stream. You add all that up together, it balances to
12.3 percent total solids that originally came in with the milk.

It is well known that in cheese making -- I'm on page 3. It is well known that in cheese making, if one starts with approximately 100 pounds of milk, you will get more or less roughly 10 pounds of cheese and 90 pounds of whey. What the solids content of 6.4 percent before the whey cream separation of the solids in the original milk, which is approximately 12.3 percent, of the solids end up in the cheese, and 52 percent end up in the whey. With permeate lactose at about 85 percent of the total whey solids, being the dominant whey solid, followed by the whey proteins and minerals.

So if you go back to page 2, and if you look at graph 1, you can see where the 52 percent of the whey total solids, 5.11 percent ends up in the whey cream, 9.45 percent ends up, is the protein, and 85.44 percent is permeate lactose.

Going back to page 3, second bullet point:

Of the whey solids that stay in the liquid whey after the cheese making process, approximately 9.45 percent of the whey solids goes into the manufacturing of WPC 80; 5.11 percent is the whey cream; and again, over 85 percent of the total whey solids go into permeate. We just looked at the graph and table to serve you.

In California, out of the 57 plants that make cheese, only 13 plants have some sort of whey concentration facilities.
See Exhibit 96.

Of the 13 plants that process whey, maybe about a third may have the economies of scale to dry permeate and lactose. The graph below, graph 3, also shows the breakdown of the components from the whey, which is the permeate, the whey cream, and the WPC 80, just a different way of looking at it.

To capture the maximum value of the whey stream, it is important to have the ability to take it all the way to a dry state. Unfortunately, the installation of whey evaporators and dryers is an extremely capital intensive operation and subject to large economies of scale. Small and medium size cheese companies like MBI, don't dry permeate/lactose fraction and don't have the ability to fund a 35 million permeate drying facility, so will be unable to capture revenues to keep up with the rising milk cost, specifically in 4b whey component formula.

JUDGE CLIFTON: Mr. Maldonado, let me interrupt for just a minute. We're at the bottom of page 3. When you read 35 million, what was the unit, 35 million what?

MR. MALDONADO: $35 million to build a dryer to dry the permeate.

JUDGE CLIFTON: Thank you.

MR. MALDONADO: You're welcome. We don't recoup the full value of the whey. Finding experienced people to run this complicated equipment is no small task. Whey evaporation and
drying is governed by huge economies of scale. Small and medium sized plants don't individually have enough whey volume to justify the expenditures. Sales and marketing expertise is critical to economic success, and most small and medium cheese plants don't currently have the expertise in-house. In time, and when additional plant capacity is needed, the cooperatives propose regulated milk pricing formula applicable to cheese plants will discourage investment in new cheese plants, NWPC plants, and will make it difficult for some plants to continue operations.

According to the Milk Pooling data table prepared by CDFA titled "Pounds of Milk Processed into Cheese," which is also Exhibit 96:

1. 43 plants presenting approximately 75 percent of these 57 total plants producing cheese in California are, on average, processing less than 788,000 pounds of liquid whey per day. (Assuming 21.7 million pounds average, milk pounds per month. And I also show how I calculated that 788,000 pounds of liquid whey. (Assuming avg.21.7M.milk pounds/mo*87% yield in whey divided by a 24 day per month operation).

These cheese factories are mostly too small to dry whey or process whey to get at whey proteins, they lose money every month on this portion of the Class 4b price.
2. Six plants representing approximately 10.53 percent of a 57 total plants producing cheese in California are processing less than 1.13 million pounds of liquid whey per day.

(Assuming avg. 31M.milk pounds/mo*87% yield in whey divided by a 24 day per month operation).

3. In other words, 49 plants in all, representing approximately 85.96 percent of the 57 total plants producing cheese in California are either not processing or processing less than 1.2 million pounds of liquid whey per day, which is at or around the break even point.

These 49 plants produce less than 19 percent of the total cheese output, according to the Exhibit 96.

JUDGE CLIFTON: I know it is a tiny thing, but when you say less than 19 percent, your figure on page 4 is actually 19.1 percent.

MR. MALDONADO: 19.1 percent, yes.

JUDGE CLIFTON: Okay.

MR. MALDONADO:

4. Although all 57 plants would be severely financially impacted by the increase in the milk price, 43 processing plants will probably never recover their investment, and 6 other plants will struggle to break even, taking them decades to recover or see return, if
they were to build a whey plant. These plants are financially burdened when they, when the whey market price increases dramatically or reaches certain thresholds.

Even for companies like ours that have some whey processing capabilities, growth in cheese manufacturing and distribution will be severely restricted should we experience further losses in our whey business. Our experience has been that during the first three to four years of our whey operation, we did not see any profits.

Cheese whey disposal has always been a burden and an environmental problem, historically costing Marquez Brothers 1.5 million per year of with zero revenue value and no milk allowance in a 4b price to recover whey disposal cost over the years.

JUDGE CLIFTON: And that cost was 1.5 million what?

MR. MALDONADO: That was the cost to dispose of the whey prior to building our whey plant.

JUDGE CLIFTON: Okay. And that was $1.5 million per year.

MR. MALDONADO: Annually.

JUDGE CLIFTON: And what I really want you to say out loud is dollars.

MR. MALDONADO: $1.5 million. Yes. Sorry about that.

Further, there's no real recognition for the whey disposal cost losses in the cooperatives' proposed mandatory
Class III milk pricing formula.

Historically, whey powder values compared with whey protein concentrate values were similar when calculated on a price per pound of protein basis. This led us to a decision in 2004 to finance a whey protein plant only. This decision was driven by two key factors:

a. The environmental problem associated with whey disposal would be alleviated if Marquez Brothers International could focus on growing its cheese distribution business, and

b. The pricing history in 2003 indicated that the revenue stream from WPC 80 only would be similar to a whole whey powder plant, and therefore, justify us building a WPC 80 only plant, while disposing of concentrated permeate as animal feed. And also, I didn't put in here, but also disposing of the whey cream.

As I mentioned earlier, Marquez Brothers International, Inc.'s primary focus is on cheese manufacturing and distribution. Prior to constructing the whey plant, our cost of dispose the whey component for years 2000 and 2005 was approximately $7.5 million dollars, or $1.5 million per year. The whey protein plant was completed in August 2005, for an investment amount of approximately $20 million. Despite our multi-million dollar investment to alleviate the environmental
problems associated with whey, we have not seen a return on that investment. Our total loss incurred from August 2005 to August 2007, mainly due to the whey component, is approximately $7 million. To date, we have not yet recovered from these losses and we are years away from ROI. Why? We simply do not have enough volume. Currently, the WPC values below dry whey values on a pound of protein basis, we are facing a very challenging environment on the whey side of our business.

As a result of having the whey plant, we have seen an increase in our hydraulic Biological Oxygen Demand, referred to as BOD, and Electrical Conductivity loads on our waste water. This has led us to make another multi-million dollar investment in the waste water pre-treatment plant in an operating cost of approximately $200,000 per month.

Cheese pricing at the customer level has become much more difficult to price out to our customers because we can no longer gauge ourselves based on the CME cheddar cheese prices. The whey component distorts our margins and pricing mechanisms. The cooperatives' proposed mandatory Class III price level significantly increases the price of our number one raw material, milk, and the whey value has no correlation to the CME cheddar cheese price. However, the cheddar cheese price has a direct correlation to our cost per pound of milk and cheese.

In the Federal Order, the entire value of dry whey
(minus the make allowance) that could potentially be generated from the liquid whey produced from cheese production is captured in the Class III milk price. In effect, this means that the cheese maker is paying his producers for the value of the whey that could potentially be generated from their milk, whether or not the cheese maker extracted the value from the whey. The producers focus only on the lack of correlation of the California price with the Federal Order Class III price.

JUDGE CLIFTON: Say that again, because, didn't quite hear what you said after the word California?

MR. MALDONADO: The producers focus only on the lack of correlation of the California 4b price with the Federal Order Class III price. This comparison is not valid. This year, cheese plants in Wisconsin could, and did, buy milk at $7.00 under the Federal Order Class III price. It is doubtful California producers will ever testify to that very real comparison with the regulated 4b price by the time this hearing concludes. They are unlikely to include information from the article written in the Cheese Reporter by John Umhoefer, on May 8, 2015.

"Dairy producers gain a value for whey in their milk price in California and in states regulated by Federal Milk Marketing Orders. But California has a better solution for valuing whey while the explanation is a bit technical. The fundamental
reason why California is on the right track isn't
technical at all. The reason is this, cheese
makers pay dairy producers the value of dry whey,
but most cheese makers don't produce dry whey.
When whey prices are high, many cheese makers take
immense losses."

According to the article, the majority of the cheese
companies that do not have the capability to process their
whey, are being charged the full price of whey in the milk
price, with no means to recover, and placing a huge financial
burden on these cheese manufacturers.

He further states that:

"It's a fundamental flaw in the Federal Milk
Marketing Order pricing if built-in discrimination
against small and mid-sized cheese manufacturing
businesses that cannot begin to afford the cost of
dry whey manufacturing. Production of dry whey
requires massive capital investment in the tens of
millions of dollars, and this investment is not
possible for most cheese manufacturing small
businesses."

Mr. Umhoefer recognizes that the whey factor in the
Federal Order system needs to be fixed, and submitted comments
to USDA making the case that dry sweet whey is not an
appropriate basis for the valuation of other solids in the
Federal Order Class III price. "Nationally, there are only 32
dried whey plants, equal to only 6 percent of the 529 cheese
plants included in the NASS survey." This problem of
overvaluation is more acute in California where plants do not
have the Federal Order option pay under minimum class prices.

Given the fact that the last five CDFA hearings have
resulted in price increases which have presented challenges to
our company, we support the Dairy Institute proposal. It is
critical to keep milk prices at levels that still provide
margins for cheese makers to invest in new technology to keep
the plants operating, to invest funds in research and
development that will lead to innovation, new products, and
expanded markets for cheese and milk. It would also
incentivize the processor community to grow by allowing the
majority of the returns to be realized by those taking the risk
of the investment, and increase milk processing capacity in
cheese plants in a time when there is excess milk.

In conclusion, adopting the cooperatives' proposal will
strongly discourage cheese plant investment and place near
plant capacity at risk. At a time when plant capacity --

JUDGE CLIFTON: Let me have you do that sentence again. I
don't quite understand a phrase you have about near-term plant
capacity. So would you read the whole sentence again?

MR. MALDONADO: Sure. Adopting the cooperatives' proposal
will strongly discourage cheese plant investment in plants near
term plant capacity at risk, at a time when plant capacity is
needed for the continued health of both producers and
processors. Milk producers are not contributing to the
investments required to process whey and alleviate the
environmental problems associated with whey. We take all the
risk and processing whey, producers don't. We make the capital
investment in whey manufacturing facilities, producers don't.
We take all the losses in weak whey markets, producers don't.

It is not sustainable to adopt a Class III price as a
mandatory minimum price paid by California cheese plants.
California cheese plants are still struggling to adopt a
change, to the change implemented by CDFA from the 2011 through
2014, which to date has added 80 cents per hundredweight to the
price of milk. Compounding our problems due to these increases
in milk price, we are confronted with ever higher energy,
labor, resin, petroleum based packaging materials, and workers'
compensation costs to operate in California, which has made it
much more difficult to be competitive in domestic markets.

Thank you for the opportunity to be here today.

BY MR. ENGLISH:

Q. Thank you, sir. You skipped a few headings, which I
think is fine, I don't think we have to read those into the
record, they are in the exhibit. There was one place, if you
go to the middle of page 4, and I do think it makes a
difference. After the numbered paragraphs, if you could read
the last sentence that says "our experience has been."

A. Yes. Our experience has been that during the first three to four years of our whey operations, we did not see any profits.

Q. Okay. You said the same thing you read before, but you have the word net profits in there.

A. Net profits, yes.

Q. And you meant to read the word net, correct?

A. Correct. Yes, you are right.

Q. All right. So, you have quoted three times from Mr. Umhoefer. And obviously those were his statements in the article, but do you agree with those statements?

A. I do agree with those statements, that's why I included them in there.

Q. And do you adopt them as if they are your own?

A. Yes.

Q. But the real point is that people outside of California are recognizing this issue, correct?

A. That's correct.

Q. Okay. So just one other series of questions. Going back to your first page in your --

JUDGE CLIFTON: Mr. English, can I just deal with a technical thing first? One word that was omitted on page 6 and I think I would like to have Ms. Elliott put it in. It is at the last full paragraph on page 6, the fourth line down. I'm
looking at the phrase "we are confronted" and what

Mr. Maldonado said next was "with", and I'd just like --

MR. MALDONADO: I might have omitted that.

JUDGE CLIFTON: I would just like for us to insert the word

"with" in the document.

MR. ENGLISH: I think it makes perfect sense, and thank

you, your Honor, for catching that.

JUDGE CLIFTON: All right. Ms. Elliott, do you see where

we are?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: All right. So we'll just insert the word

"with" there and then it will be exactly as Mr. Maldonado said

it. Mr. English, thank you.

MR. ENGLISH: Thank you.

BY MR. ENGLISH:

Q. So I have just a couple of questions more.

You weren't here earlier, but it was reported to you

when you are talking about the testimony of a previous witness.

There was testimony by the previous witness that a plant in

Houston, Texas faced competition from Hispanic cheese coming

out of California. Do you have any comment on that discussion?

A. I did hear something about the Houston plant owned by

DFA made a comment in earlier testimony. The only thing I can

say about that comment is that they are in a Federal Order

marketing system, so they can always depool, obviously, and pay
a different price than the minimum price at the Federal level.
We don't have that option here in California.

Also, in California, we do have higher labor cost,
higher regulatory cost, workers' compensation, and on and on, a
lot of the points I made on the last paragraph of my testimony.
There's just a much more expensive operating environment here
in California than it is in Texas. But the most important
thing is that the competitors can always depool. And given the
fact that there they are owned by DFA, and DFA can always, if
they wished, depool and have the competitive price.

Q. And a cooperative can also reblend proceeds for its
dairy farmers, correct?
A. Correct.

Q. Okay. And you don't know they are doing that, but you
know they have the ability, correct?
A. Right.

Q. Your Honor, that completes my direct examination. I
move admission of Exhibit 105.

JUDGE CLIFTON: Thank you, Mr. English. Is there anyone
that would like to ask questions of Mr. Maldonado about
Exhibit 105 before determining whether you object to its being
admitted? No one. Is there any objection to the admission
into evidence of Exhibit 105? There are none. Exhibit 105 is
admitted into evidence.

(Thereafter, Exhibit 105 was
received into evidence.)

MR. ENGLISH: Mr. Maldonado is available for
cross-examination, your Honor.

JUDGE CLIFTON: Who will ask the first questions of
Mr. Maldonado? Thank you.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Good afternoon, Mr. Maldonado.

A. Good afternoon.

Q. We have not met, but I'm the attorney for the
cooperatives which have put forth Proposal 1 and requested this
hearing, so I have a couple of questions for you.

A. Sure.

Q. First of all, I probably missed this, but what position
do you have with the company?

A. The General Manager.

Q. Of --

A. Marquez Brothers International, of the cheese plant.

Q. Of the cheese plant?

A. Yes.

Q. But not of Marquez Brothers International?

A. No.

Q. Okay. So Marquez Brothers International is quite a
large enterprise, is it not?
A. I'm not sure what your definition of a large enterprise is.

Q. Well, it, just reading the website, it says you have a distribution network that includes the United States, Mexico, Canada, and Europe, and that Marquez Brothers International and its affiliates have become the number one market leader in the authentic Mexican food segment of the consumer products industry, and a major importer of national leading brand of grocery items from Mexico and Central America.

Is that all correct?

A. That's correct.

Q. You are number one in market leader in the authentic Mexican food segment in U.S., Mexico, Canada, and Europe?

A. We would like to think so. It depends.

Q. Okay. Is that a reasonably large enterprise?

A. Not necessarily.

Q. I guess it depends what you compare yourself to, huh?

A. It depends what you compare yourself, yes.

Q. Okay. Well, compared to some of the dairy farmers that I'm representing, would you consider yourself to be a reasonably large enterprise?

A. We consider ourself to be a mid-size.

Q. Mid-sized company?

A. Mid-size company.

Q. Is that like S and P 500 mid-size?
A. No.

Q. You have recently expanded into, what, the entertainment and telecom business as well?

A. No.

Q. No?

A. No.

Q. You have a website that says it's a market leader in the production and the distribution of authentic Mexican food products, Marquez Brothers International has branched out into other business ventures. Additional services include entertainment and telecommunications.

A. That's probably just more of our advertising.

Q. I'll leave it at that. Okay. So let's talk about your cheese business a little bit. You are the General Manager of the plant. So --

A. Yes.

Q. Your products include Queso Fresco, cheese, creams, and drinkable style yogurts. So are they all made in the Hanford plant?

A. Yes.

Q. What -- by the creams, do you know how the products are all classified in the CDFA system, the drinkable yogurts, are they Class 1 or Class 2 or 3?

A. Class 2.

Q. Class 2. And how about the creams?
A. Class 2.

Q. So, and the cheeses I assume are Class 3 or 4b I should say?

A. 4b, yes.

Q. Okay. So what portion of your production is in the Class 2 versus the 4b?

A. What portion?

Q. Yes, what percentage?

A. That's classified information.

Q. Can you give us any range? Is it less than, you know, is it more than half Class 2?

A. I wouldn't want my competitors to know what percentage of production we have versus, you know, creams and Class 2 or Class 4b.

Q. Okay. Are there Hispanic style cheeses -- are there multiple -- do you -- do you manufacture multiple Hispanic style cheeses?

A. That's correct.

Q. Can you give us an idea of what some of them are?

A. We make Queso Fresco; we make Panela; we make cotija; requeson; menonita, there might be a few others.

JUDGE CLIFTON: Okay. You just named four things I don't know how to spell. Could you tell us again and spell each one for us?

MR. MALDONADO: Sure. Queso Fresco is Q-U-E-S-O,
F-R-E-S-C-O.

JUDGE CLIFTON: Now, there were still four more.

MR. MALDONADO: There's also Panela, which is P-A-N-E-L-A, and there's also Cremesos, C-R-E-M-E-S-O.

JUDGE CLIFTON: That sounds like "cremesos."

MR. MALDONADO: That's a creamy type of cheese, yeah.

JUDGE CLIFTON: Okay. But you pronounced it "cremoso". Spell it one more time for me?

MR. MALDONADO: C-R-E-M-E-S-O.

JUDGE CLIFTON: Okay. I still can't make that work.


JUDGE CLIFTON: That works for me. Thank you. Okay. So Panela, Cremeso, and now?

MR. MALDONADO: And also Cotija, which is C-O-T-I-J-A.

JUDGE CLIFTON: Cotija.

MR. MALDONADO: Cotija, it's kind of like parmesan cheese.

JUDGE CLIFTON: And then one that sounded like --

MR. MALDONADO: Requeson, that's R-E-Q-U-E-S-O-N.

JUDGE CLIFTON: Thank you very much. And if you make more keep going, I just needed to have that much explained.

MR. MALDONADO: Sure.

BY MR. BESHORE:

Q. Are there more?

A. There's actually, I think that's probably most of it.
I mean, we do make some other types of cheeses, but that's the majority of it.

Q. Okay. That's good. Thank you. Can you tell us anything about these cheeses since you are more familiar with them certainly than I am. For instance, moisture content?

A. That's confidential information.

Q. Okay.

A. I wouldn't be --

Q. With respect to all of them?

A. Yes.

Q. Okay. You said one of them was something like parmesan. Is that, what, cotija?

A. Cotija, yes.

Q. So I take it that's a low moisture cheese?

A. That's correct.

Q. Can you rank them? I mean, in terms of high to low moisture without telling me the percentages?

A. Again, that's still confidential information.

Q. That's confidential?

A. Yeah.

Q. What yield do you get, how many pounds of Queso Fresco from a hundred pounds of milk?

A. Again, that's also confidential information.

Q. More or less than cheddar?

A. Again, that's confidential information.
Q. More or less than Mozzarella?
A. Again, that's confidential information.
Q. Who are your -- oh, do you sell your cheeses from the Hanford plant nationwide in the United States?
A. Yes.
Q. And also to what, Mexico, Canada, and Europe?
A. If there are stores out there that buy our product, yes.
Q. Are there stores out there that --
A. I don't know.
Q. Do you package your cheeses or are they -- do you sell them to be packaged by someone else?
A. We package our cheeses.
Q. At your Hanford facility?
A. That's correct.
Q. Okay. Who are your main manufacturing competitors in the United States, if you can tell us?
A. There are many. I think that just in California I think there are over nine.
Q. Nine competitors in California?
A. Nine.
Q. Nine other manufacturers of --
A. I mean, you go to any given store, most likely there's about nine. You know, five plus competitors, five different brands, nine different brands, there's just so many of them out
Q. So can you tell me, are there any other manufacturers of Hispanic cheeses that distribute like Marquez does at all 50 states?
A. I think they are each and every single one of them are a little different from ours. But yes, I think that there are maybe a couple might distribute in all 50 states. We don't distribute in all 50 states. We are mainly in the Midwest to the West.

Q. Okay. So you don't distribute in the east, then?
A. We're very few stores out there.
Q. Okay. So in the area where you distribute, well, are there -- start over again.
Are there Hispanic cheese manufactures of which you are aware who do distribute in all 50 states?
A. No.

Q. Okay. Give me the two or three competitors with the largest geographic scope of distribution that you are aware of?
A. You know, that I'm aware of, I know there's some in Wisconsin, I don't know their names, and there's one here in California.
Q. Okay. Who is the one in California?
A. I think Cacique might be one of them.
Q. And the, you know that, you think there's some in Wisconsin but you don't know their names?
A. I don't know their names, no.

Q. How do you know there are some there if you don't know their names?

A. I don't know their names to quote them here on. I can't, I don't remember exactly their company names.

Q. Do you know their brand names? The brands they market under?

A. I think I might know, but I don't, I wouldn't be able to tell you exactly their brand names.

Q. Okay. But there are cheese manufacturers in Wisconsin that compete on a national basis in sales of Hispanic cheese?

A. I think so, but I don't know for sure.

Q. Okay. So you were not here, I don't think, maybe you were. Were you here when Mr. Dryer testified?

A. No.

Q. Mr. Dryer from Saputo?

A. No.

Q. But you did, you did obtain Exhibit 96, which I used, I presented in cross-examining him, correct?

A. Yes, I did use the exhibit, yes.

Q. Right. Did you see any of the other exhibits that I used with him?

A. No, I was not here.

Q. Okay. Well, let me -- let me suggest that he, Saputo has cheese manufacturing plants in Wisconsin as well as in
California. Are you aware of that?

A. I understand Saputo has plants, other, many plants.

Q. Okay. They are not a competitor of yours, however?

A. No.

Q. Okay. So if Mr. Dryer, as well as other witnesses in this hearing and other evidence that was presented, have established that the cost of milk to make cheese in Wisconsin is $1.50, $2.00, perhaps even more, higher than that in California, are you aware of that?

A. Aware specifically of the price in Wisconsin for a particular?

Q. The price to make, to get, to buy raw milk to make cheese throughout Wisconsin?

A. Are you comparing Wisconsin with California?

Q. Yes.

A. Okay. Yes, I'm aware of that, yes.

Q. Okay. Does that give you a competitive leg up on the manufacturers in Wisconsin that you are competing with?

A. Well, that brings me back to the option that these cheese manufacturers have, that they are able to depool and work directly with the farmers at the price that is not announced. It is not published.

Q. Okay. So --

A. But I don't know that information. I don't know that information is not published, so I can only assume.
Q. Okay. So your assumption is, first of all, do you have any familiarity, experience with pooling milk under a Federal Milk Marketing Order?

A. No, I don't.

Q. Okay. So then you really don't know what the pool, how depooling works?

A. I have a general sense. I have been to several courses, but I don't, since we're in California, milk on the, what we're in the California, there's no need for me to really understand the Federal Milk Marketing Order. But, you know, I do have a general understanding of what the depooling is.

Q. Okay. And your general understanding, I take it, is that depooling means that the nonpool plants in Federal Order areas pay less than the Federal Order price for their milk?

A. Right. The depool plants, yeah.

Q. Okay. So if -- and that's what you base all your conclusion, your assertions here -- wait a minute --

A. Not only that.

Q. Well, your assertions about depooling in the Federal Order system are based on that understanding that you just stated; isn't that correct?

A. That's one. Various points I made earlier in my testimony, one of them being labor, it's labor is much more expensive, perhaps even 30 percent more here in California than it is in Wisconsin.
Q. And --

A. As far as workers' comp, regulatory requirements. Let me take you back to my last page of my testimony.

Q. Well, what's the basis for the those comparisons you just made?

A. Well, I mean, the California just raised the minimum wage to, I think $10.00 at the beginning of the year, it is up to 9 something right now. Federal level I think it is in the 7 range. And I think, so there's a huge discrepancy on just on wages. And so obviously, and this is a very labor intensive operation we run here, so we have a lot of employees, where, you know, to make these type of products. So it is very labor intensive if you compare it to a cheddar cheese plant. A good portion of our cost is labor.

Q. So your assuming that --

A. And workers' comp, and, I mean, so workers' comp goes along with that, medical insurance benefits, and so it just goes on and on. Also regulatory requirements, water treatment. Perhaps these other places that have ponds, we don't. We need to put a waste water between plants. It costs millions and millions of dollars, and millions more to operate every year.

It is a very different operation here in California to operate a business is very costly. And so the cost to operate in California is mitigated, is nulled with the perhaps what your statement that you are making that the price, the milk is
cheaper somewhere else.

Q. In other words, by being able to buy your milk cheaper from dairy farmers in California, you can compete with the, you can pay your workers more and pay more for workers' compensation, etcetera. That's how you make it in California, is that it?

A. What I'm saying is that, your question was about the price difference between California and the Federal. And I'm saying that there are several things that the, that the cheese manufacturer and in Wisconsin or Texas can do, and one of them is they have the option and the ability to depool whenever they want, plus they have lower labor cost compared to us. So it is not apples to apples comparison between California and Wisconsin and also California and Texas. You are not comparing apples to apples. It is very different environment we're working in, the cost of operations are very different, so it is not, if you were to compare two companies in California, yes. But to compare a company whose got the ability to depool and work directly with the farmer, and if that cheaper labor, lower workers' comp, lower cost to operate, it is just very different.

Q. Okay. So that's -- are there any other factors? The cost of labor and the ability to depool, was that, those are the things that are different between your cost -- your cost profile here in California and your competitors in Wisconsin.
Is that your testimony?

MR. ENGLISH: Just, your Honor, after three or four times he's shortened it just to cost of labor, and the witness has said there's all sorts of other regulatory cost.

JUDGE CLIFTON: I agree. I remember environmental specifically. So, yes, Mr. Beshore, I know you want him to summarize, but he did name a lot of variables that you left out.

MR. BESHORE: Okay.

BY MR. BESHORE:

Q. So generally, the cost of doing business in California and the ability to depool are the two characteristics that you believe make your lower cost of milk justified in California?

A. I think at the plants, like I said, and in those states have the ability to depool, yes, and also operate under very different circumstances than the California plants do. They have lower cost of labor.

Q. I'm not asking you to repeat.

A. Right.

JUDGE CLIFTON: Well, then don't ask him that question.

MR. BESHORE: I asked, I summarized it as the cost of business and the ability to depool, cost of doing business. I meant that to be general, your Honor, to respond to the objection.

JUDGE CLIFTON: Well, then it doesn't add anything.
MR. BESHORE: Just wanted him to confirm.

JUDGE CLIFTON: Well, I don't think it helps. I don't --
when he's precise and specific, I don't think it helps for you
to be so general just to get him to confirm.

BY MR. BESHORE:

Q. Are there any other differences?

A. Yeah, the differences, obviously, like I stated on my
testimony, higher cost of energy, also labor, resin, petroleum
based packaging products, a lot of them had to be brought in
from out-of-state. So it is different cost to operate here.
Benefits to employees. California just passed some new laws
requiring to us increase, you know, time off for employees, and
so on. So it is, the cost of, has increased tremendously for
us here in California as well.

JUDGE CLIFTON: If I could ask, I didn't understand the
packaging using petroleum products. Why is it different for
you?

MR. MALDONADO: So a lot of those products are coming from
the East Coast, and so, you know, there's freight involved as
well.

BY MR. BESHORE:

Q. Okay. So it is your testimony that the factors you
enumerated, I don't want to limit you, but the factors you
enumerated are more expensive in California than they are in
Wisconsin?
A. That is correct. And also, as I stated earlier, I feel like I'm repeating myself -- all the points I made earlier about the fact that the cheese makers are able to depool, which is a huge disadvantage for us here in the fact that they have that ability to go straight to a farmer and deal directly with the farmer, and negotiate price, is very, it puts them at an advantage over California cheese manufacturers. Obviously, the cost of labor in these states are much different than it is in California. As many of those, many of the cheese manufacturers in California can attest to.

Q. Okay. So what leads you to believe that the advantage of depooling, as you have described it, leads to less, cheaper milk supplies in those areas?

A. I don't quite understand your question.

Q. Why do you think the ability to depool, as you have described it, means that the cost of milk to those competitors is less than yours?

A. I think I just, I answered the question. The fact that the cheese manufacturer has the ability to depool, and cheese manufacturing in California do not have the ability, we must pay the minimum price in California, obviously that puts us at a disadvantage.

Q. Okay. Let me ask you about your whey operation just a question or two. Before you -- before you invested in whey processing business in 2004, how did you dispose of your whey?
A. We hired trucks to dispose of it, and we had to buy pumps and sometimes we had to haul it -- maybe, you know, when you have, for example, when you have, I'm going to give you a hypothetical number. You have a hundred truck loads of milk coming in, you got to have 80 truck loads of whey going out. So it was a logistics nightmare for us to not only manage our business, but then manage the logistics of disposing of the whey, hiring truck drivers, buying trucks to haul the whey off, buying pumps to, and tanks to leave at, with the farmers so we can leave whey at those locations, and those are 24 hours, nonstop, 7 days a week.

Q. Okay. So you were taking all the whey and basically spreading it on the ground?

A. No, we were -- well, multiple things we were doing is, some farmers use it to feed it back to their calf or cows. And others were disposed of, others were, you know, I'm not sure what they did, I don't recall.

Q. But you didn't sell it for any processing to any other to a whey processor?

A. No.

Q. Okay. Do you buy whey now from other sources to process through your plant?

A. We -- that's confidential information.

Q. Okay. It was expensive and logistically difficult to dispose of whey before you had your own processing?
A. That is correct.

Q. Okay. So have you saved money by going into your own processing?

A. It avoided us from making that expense, but now we have the expense of operation to maintain, yes.

Q. Right. But let's say it cost you, I'm just being real simple here to try to communicate, it would cost you $10 to dispose of something, and you invest in, and you invest in a piece of equipment so you don't have to dispose of it, now it cost you $9 to dispose of it. Is that sort of how it works with your whey? That is that the cost of disposing of it is less now than it was before because you have invested into equipment which processes it into a product that you can sell?

A. That is correct.

Q. So, in that sense, since your net cost of disposal is less, you have had a return on the investment?

A. We have not had a return on the investment yet.

Q. Well, if it cost you $10 before and now it cost you $8 to dispose of it, the $2 has been reaped by the investment?

A. There are many, many years we have had negative returns, even after the investment.

Q. So you are saying that it cost you more to dispose of it after you made the investment than it did before?

A. Yes. But there are some years, there are, you break even and there are some years you don't break even. And we
have not been able to recoup our investment.

Q. Okay. You haven't recouped your total investment yet?
A. Right.

Q. Okay. What's the end product of your whey processing?
A. Whey protein concentrate, 80 percent.

Q. And what do you do with the lactose or the permeate?
A. We sell it to animal feed and it wet -- not dry. We
don't have the drying capability to dry the lactose.

Q. So it's sold all on the animal feed market?
A. Yes, which is less than a penny a pound compared to
what the market sells of 70, 50, 20 cents recently.

Q. Yeah, when lactose, when dry lactose is going for, you
know, 50, 60, 70, 80 cents, is there a market for that permeate
with people that have the ability to dry it and convert it into
that kind of return?
A. We have not been able to find an outlet for it.

Q. Very good. Thank you very much.
A. You're welcome.

JUDGE CLIFTON: I don't know if you can answer
Mr. Beshore's question about how much less you pay now that you
are no longer disposing of the whey, but are putting it into
your processing.

MR. MALDONADO: Right. So even though there is, we are not
incurring a cost of disposing of the whey, we are still
incurring cost of drying and in weak markets, we have a
negative, and so there are losses. And there have been many
years where we have losses. We have also had years where we
have broken even, but there have also been many years where we
have losses. And we haven't been able to recover the
investment, still take us many, many years to recover that
investment.

For us, it's just the fact that we're not having to
logistically trying to figure out how to dispose of the whey,
which is a huge advantage for us. Now we can focus on our core
competency of making cheese, and not worry about a how to
dispose of that whey.

JUDGE CLIFTON: Who next has questions for Mr. Maldonado?

CROSS-EXAMINATION

BY MR. VLAHOS:

Q. John Vlahos, also representing the Cooperative
Proponents of Proposal Number 1.

A. Okay.

Q. Mr. Maldonado, you mentioned slightly amongst the
category of differences between costs in California and say
Wisconsin. You mentioned labor cost, correct?

A. That's correct.

Q. And one of the things you mentioned in that regard was
that the minimum wages by law in Wisconsin are less than those
in California minimum wages required by law, correct?

A. I think they are under the Federal minimum wage, right?
Q. They meaning Wisconsin?
A. Wisconsin, yeah.
Q. Do you really know what they are under?
A. I don't know exactly, but I can look into that. I can get you that information.
Q. No, but you testified that there were differences. What's your basis for testifying that there are differences?
A. The federal minimum wage.
Q. Do you know that they pay the federal minimum wage or pay more?
A. I have to double check that for you.
Q. Your answer right now is you don't know?
A. I don't know.
Q. Okay. In fact, you don't know what they pay their producers at all?
A. I'm not sure what you mean what they pay their producers.
Q. Cheese plants in Wisconsin, excuse me, I didn't mean producers, I misspoke myself. You don't know what wages are paid in Wisconsin to the workers of a cheese plant?
A. I think I have that information, I just don't have it readily available for me today.
Q. And where is that information?
A. I researched it one time sometime ago, and I just, I
didn't come prepared to answer that specific question.

Q. But you did testify under oath that it was less.

A. I did testify that it's less, yes.

Q. Okay. Now, are you aware that California producers also face high labor costs?

A. Yes.

Q. And dairy farmers also have to pay higher cost to, for regulatory compliance?

A. Yes.

Q. And that they have to pay higher cost to comply with environmental regulations?

A. That's correct.

Q. And that they pay higher workers' compensation?

A. Yes.

Q. And that they have a higher cost of energy?

A. Are you talking about farmers?

Q. Yes.

A. Yes. I think everybody in the California is facing the same struggles.

Q. By the way, you mentioned at some point, I may have missed this so bear with me, but you mentioned something about co-ops can repool. Can you explain to me what you meant by that in the context? I think I missed it.

MR. ENGLISH: I think you missed it because that's what not what he said. I object. That's a mischaracterization, he said
reblend.

MR. VLAHOS: Excuse me, I accept that. Thank you, Mr. English, reblend.

BY MR. VLAHOS:

Q. Can you tell me what you meant by that?

A. Yeah, they can always depool. For example, we're talking about the this competitor in Houston who can actually depool, and co-ops can reblend.

Q. And what's your understanding of what the co-ops can do in reblending?

A. Well, they can, they actually, since in this particular case, reblanding is taking milk out of the Milk Marketing Order and then reblending the prices.

Q. And what is your basis for saying that they can do that, that that particular co-op can do it?

A. I don't know. I don't know if they can or not, but we just --

Q. So you don't know --

A. We can make an assumption that they can.

Q. So that was your assumption?

A. Correct.

Q. Now, you mentioned one of the factors, important factors was the ability of plants in Wisconsin to depool. Do you know whether if they depool they, in fact, pay more or less than California cheese plants pay for milk?
A. We don't know that. Obviously, that's something that's probably confidential.

Q. So when you testified that it was an advantage because they could depool, you actually have no basis for that, have you?

A. What we do know is they have the ability to depool.

Q. But I'm asking, do you know whether they do depool they actually pay or more less than California cheese producers do?

A. Obviously if they depool, they have the option to pay less. Right?

Q. They have the option to pay more also, than the California rules?

A. Yeah. I mean.

Q. That's all the questions I have.

A. Good.

JUDGE CLIFTON: Had you finished, Mr. Maldonado?

MR. MALDONADO: I finished, yes.

JUDGE CLIFTON: All right. Who else has questions for Mr. Maldonado? Let me take Mr. Miltner first, then Mr. Vetne.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Thank you, your Honor. Ryan Miltner representing Select Milk Producers.

Mr. Maldonado, in your, I guess it is the second paragraph after your introduction, you testified that well, you
know what, I'm looking at the wrong one.

Let's go to the third large paragraph there. "It is generally acknowledged that a plant must produce at least 1.2 million pounds of whey per day in order to reach the economies of scale necessary for a whey plant investment to break even."

What information do you rely upon when you say it is generally acknowledged that that is the number?

A. This is information where we actually, through personal experience, and through also a consultant, an expert in the business as well.

Q. Okay. Who is the consultant?

A. We had various consultants. We hired a company out of Wisconsin to help us build the whey plant. And when we hired them, but the business is no longer, they no longer exist, but this consulting firm helped us put this plan together to build a whey plant, because we didn't know anything about the whey business.

Q. You probably know a little more than I do, although I know more than the average guy on the street, so somewhere between the two of us, hopefully you can help me get some more flesh on these bones. Okay?

A. Sure.

Q. So your consultant gave you the information and you said that's the general acknowledgement you are relying upon?

A. That's correct.
Q. Okay. Thank you.
A. And we built it, and so, I mean, we have the experience, we have firsthand experience to prove it.
Q. Sure. Mr. Beshore asked you some questions about how you handled your whey before 2004.
A. That's correct.
Q. Let me ask, I don't think he asked this specifically. Before you built that whey facility, was your cheese operation profitable?
A. Yes, it was profitable. Yes. It depended on the milk prices and some years are bad, some years are good.
Q. As with most businesses?
A. Right.
Q. Including dairy farming? Everybody has good years and bad years, depending on the markets, right?
A. That's correct.
Q. On page 3 of your statement, the first bullet point, you are talking about the Van Slyke formula, generally?
A. Yeah.
Q. And you say, "it is well known that in cheese making if one starts with approximately 100 pounds of milk, you will get more or less, roughly ten pounds of cheese."
A. That's correct.
Q. Ten pounds of cheese from 100 pounds of milk, the moisture in the cheese bears an awful lot on what that actual
yield is though, correct?

    A. Right.

Q. So generally, as you increase the moisture in the cheese, the yield also increases proportionally, correct?

    A. That's correct, yes.

Q. And the rule of thumb of ten pounds of cheese is, is usually a 38 percent moisture, thereabout, correct?

    A. Yes.

Q. Okay. I don't -- I don't want to know -- well, I do want to know, but I know you won't answer -- so let's talk about Queso Fresco generally, okay?

    A. Sure.

Q. What's a typical moisture content for Queso Fresco cheese?

    A. I wouldn't be able to answer that, it is confidential information.

Q. Okay. We have folks writing about this stuff --

    A. Correct.

Q. -- there are textbooks written about cheese manufacturing.

    A. Sure.

Q. And one particular textbook suggests that fresh Queso Blanco has an average composition of about 50 to 56 percent moisture. Would that sound reasonable to you?

    A. For that particular cheese, we don't make that cheese,
but, yes.

Q. Okay. For the cheeses you make?

A. Again, that's confidential information. I won't be able to release that information.

Q. Okay. For the cheeses you make, I'll finish my question, and then you can answer again.

A. Sorry.

Q. That's all right. For the cheeses you make, do you see a range of moistures in the finished cheeses, depending on the type of cheese?

A. There is a range of moisture, yes.

Q. And are some of them greater than 38 percent?

A. Again, I can't answer that question.

Q. You won't tell us if any of your cheeses are on one side or the other?

A. No, again, this is proprietary information.

Q. Okay. What would a typical manufacturer of Queso Blanco cheese expect?

JUDGE CLIFTON: Why is that relevant since they don't make it?

MR. MILTNER: I'm sorry, Queso Fresco.

JUDGE CLIFTON: Okay.

MR. MALDONADO: What was your question?

BY MR. MILTNER:

Q. What's a typical range that one might expect? Not you,
I don't care about you anymore. I will in a few minutes, Mr. English.

A. Again, that is if you are asking about my process, I don't know. I'm not sure about other processes, but I won't be able to really, or give information about our operation.

Q. Okay. I didn't ask about your operation, but I'll take your answer at that.

Third bullet point on the same page. You state that "13 plants in California have some sort of whey concentration facilities." The whey operation you have, is that a whey concentration facility?

A. Yes, it is.

Q. It says, of the, further in the same bullet point, maybe -- "maybe about a third may have the economies of scale to dry permeate and lactose." I understand that your facility does not have the ability to do dry permeate and lactose; is that correct?

A. That's correct.

Q. Moving on to page 4. This is the first paragraph after your four numbered paragraphs there. Your statement reads, "Our experience has been that during the first three to four years of our whey operations, we did not see any net profits."

A. That's correct.

Q. Okay. So if you started your whey facility in 2004, that would cover up to about 2008, am I correct there?
A. That's correct.

Q. So after that point did you see any net profits?

A. We did see some profits, but those go, those years go up and down.

Q. Right.

A. Those four years from when we first started, there were some huge losses.

Q. And you said it goes up and down, just like you mentioned in a prior answer that markets change, and some years are good and some years are bad?

A. After that, yes.

Q. Further down on page 4 you have a, you talk about your decision, your company's decision to work on its whey disposal, or whey handling. And the paragraph begins with a little (b), "the pricing history in 2003 indicated the revenue stream from WPC 80 only would be similar to a whole whey powder plant and therefore, justified as building a WPC 80 only plant."

I mean, you did analysis at that point and made the best economic decision your company could at that point, correct?

A. Right, we could have gone either way.

Q. Could have gone either way. Could have done a multi-use facility even, correct?

A. I'm not sure what you mean by multi-use, but at the time we could have done regular whey or WPC, yeah.
Q.  And there are plants that have the ability to switch back and forth among whey products, correct?

A.  I'm not sure if there are other plants that can switch back and forth between regular whey and WPC.  WPC 80 requires a very specialized dryer and membranes and so it's a very different operation compared to just a regular dryer.  For a regular dryer, you need a larger dryer.  For a, to dry whey, you need a larger dryer, and evaporators, so on, so forth.

Q.  Sure.  If Marquez had decided to instead go down the route of putting in a whey dryer and just do dry whey, would your results have more carefully tracked or more accurately tracked the price formulas?

A.  There would be, track, that would be a commodity price, yeah, so it would be tracked based on that commodity price.

Q.  And your losses would have been lower, would you expect?

A.  It would have been about the same, if not more perhaps.

Q.  Okay.  Why would -- I'm curious as to why your losses would have been greater if you are producing a product that tracked a commodity included in the price formula?

A.  I think that the WPC 34 percent, I'm sorry, the WPC 80 and regular whey, of the regular whey is a very competitive market.  You need to economies of scale to be able to compete and be able to price yourself, because it is a commodity.  And so, since we don't have the economies of scale, we would be at
a huge disadvantage to sell something that we make very little of. WPC 80, you can add, there's a value added. You can make it instant perhaps, if you want, and charge a few pennies extra perhaps.

Q. Are there any other cheese manufacturers in your geographic area?
A. Yes, there are.

Q. Are they, do they have similar whey issues?
A. I know of some that have some serious whey issues, yes. At least a couple.

Q. I guess collectively with all the whey in your geographic area, would you collectively be able to meet the economies of scale necessary to make your plant profitable?
A. Perhaps. We just don't -- we need to invest in silos, more membranes, of which these other entities have not wished to do that. We haven't been able to do that, either.

Q. So presumably, if they are acting rationally, the economic cost of making that investment exceed the whatever returns they are getting now?
A. Right. It requires a large investment on MBI to make initially, it also requires a large investment on the cheese manufacturer to make as well, because they would have to install a reverse osmosis system to concentrate their quantities and so on. And that type of collaboration has not occurred. And we have tried to get some from some places, and
we have been successful in others, and others we have not.

But, anyway, so I think that there's still opportunities out
there to get more whey, yes.

Q. Thank you. You used an acronym or some initials in
your answer there, MBI, is what you said. What does that stand
for?

A. Marquez Brothers International.

Q. Yeah, that makes sense.

A. Okay.

Q. In your conclusion you testify that "milk producers are
not contributing to the investments required to process whey
and alleviate the environmental problems associated with whey."

But, I mean, milk processors don't contribute to the
investments necessary to milk cows, do they?

A. No, I guess, as I made it, as a testimony states, is
that, as we made cheese, we do have that problem of what do we
do with the whey? And so obviously we had to make a huge
investment, endeavor into a new area we've never been before,
which is whey processing.

Q. Kind of like handling manure in one sense, right? Yes
or no?

A. Like what?

Q. Like manure?

A. Cow manure?

Q. The processors don't kick any money back to the
producers to help line a lagoon or put in a digester, right?

A. Right.

Q. And when the milk prices are down, producers take all
those losses on the farm, right? The processors don't,
correct?

A. No, that's not what I was referring, don't take that
out of context.

Q. No, I understand.

A. What I was referring to is the whey operations,
specifically the whey. I do feel that the farmers have
struggled, and my heart pours out to them, and I do wish there
was something that can be done. But I was referring
specifically to the whey operations.

Q. You state that your cheese market is highly price
sensitive and very competitive. Is that any different from any
other cheese manufacturer?

A. Yes, it's very different from the other cheese
manufacturers. Other, such as commodity cheddar cheese, their
price is a commodity price, so their price is not as price
sensitive as ours.

Q. Not very competitive?

A. I, that's a commodity price, so that price is set by
the Chicago Mercantile Exchange, and so it's a different type
of cheese. It's not a specialty type cheese. Ours is
specialty type cheese.
Q. So when, without asking for specifics about your prices when you price a product, do you pay it to the CME or completely independent of the CME?

A. Again, that's confidential information.

Q. I may have some more questions after I look over a few things, but that's all I have right now. Thank you.

JUDGE CLIFTON: Thank you, Mr. Miltner. I think we should take a break, Mr. Vetne, before you come ask questions. It's 4:06. Let's take 15 minutes. Please be back and ready to go at 4:21.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 4:21. Mr. Vetne?

MR. VETNE: Yes. John Vetne, representative for Hilmar.

CROSS-EXAMINATION

BY MR. VETNE:

Q. Thank you. Mr. Maldonado, a couple of questions. The really beautiful color illustrations on page 2 and 3, as I understand it, do not represent your company's recovery of cheese and whey from incoming milk, but is rather theoretical, more or less based on cheddar; is that correct?

A. That's the theoretical, yes.

Q. Okay. You mentioned that you dispose of the lactose permeate as animal feed. Does that go from, how does -- how does that get from your plant to --

A. So the lactose feed goes through our own system, it is
concentrated to about, I believe 20 percent, and 22, 22 and 20 percent. And that is, we have a company who comes there and picks up the lactose and hauls it and uses it for animal feed.

Q. Do you know whether they -- how they use it for animal feed? Mixed with other feed?

A. I'm not -- I don't know how they use it, but I'm sure they know how to do it.

Q. Does that represent a sale for you or is that something you pay the person to come pick up and dispose of?

A. It depends. It is a sale for us and it's less than a penny a pound. But it is, it -- we don't meet those targets of 20 or 22 percent solids, then they charge us to pick up that whey.

Q. Okay. Do the solids include any fat?

A. It does include the whey cream as well, so since we cannot recover the whey cream, if we don't do anything with the whey cream or the permeate, over 90 percent of the, of that solids that go into the whey is basically, basically give it away.

Q. So all of the whey cream and most of the lactose, the lactose that doesn't end up with WPC 80 --

A. Right, which is 85 percent of it.

Q. -- so that lactose and all of the whey cream ends up in a truck somebody picks up, and takes it and use it however they will for animal feed; is that correct?
A. That's correct, yes.

Q. You indicated that you market your product, not so much to the East Coast, but to the Midwest or the central states; is that correct?

A. Yes.

Q. Your cheese products from say Chicago down the Mississippi River, to --

A. Right.

Q. -- Houston, Galveston?

A. We ship our product from Hanford, California, to Chicago, and also to Dallas and Houston, yes.

JUDGE CLIFTON: I'm sorry, to Dallas and Houston?

MR. MALDONADO: Houston, Texas, yes.

BY MR. VETNE:

Q. So you indicate that you package your products into consumer type packages at your plant in California.

A. That's correct.

Q. Okay. And it goes from there to somebody else's warehouse? Your own warehouse?

A. It goes to our own warehouse.

Q. You have warehouses at multiple locations?

A. We have warehouses at multiple locations, that's correct.

Q. In the Midwest?

A. In the Midwest. In Chicago, Dallas, Houston, Denver.
Q. Okay. Does it go from there directly to the stores or is there some intermediate warehouses in some places?
A. So it depends on the store. The majority is direct store delivery.
Q. From your warehouse?
A. From our warehouse, we have our own trucks that deliver the product to the stores. There are some customers that we do deliver directly to their warehouse, such as Costco or Wal-Mart.
Q. The box stores?
A. The box stores, yes.
Q. You went through a long list of things that make it costly for you compared to a competitor that might be located in Texas or Wisconsin. You didn't say much about transportation. How much does it cost to get a pound of cheese to your Midwest warehouses?
A. That's -- that I think you are right, that's one point that should have been included in my testimony, and that is transportation cost is very high cost, and currently it is about 10 cents per pound.
Q. 10 cents per pound of finished cheese. And that's an average for your market basket of cheeses?
A. That's an average, yes.
Q. Okay.

JUDGE CLIFTON: Mr. Maldonado, make sure Mr. Vetne's voice
has died off before you answer him, please.

    MR. VETNE: And I don't mean for my voice to die off
prematurely. Sometimes it does that, too.

    BY MR. VETNE:

Q. You indicated that you don't have much product sold
along the East Coast. Where are the manufacturers of
Hispanic-style cheeses that distribute product along the East
Coast located? Are you familiar with that?

A. We do -- we are aware that there are cheese
manufacturers in the East Coast, New York, and they do
manufacture and dominate that market area.

Q. Okay.

A. And also Wisconsin markets, Wisconsin cheese
manufacturers may also dominate the Eastern part of the Midwest
and the Eastern part of the United States.

Q. Okay. Thank you. Thank you very much. That's all I
have.

A. Okay.

JUDGE CLIFTON: Who next will ask questions of
Mr. Maldonado? Mr. Francis?

CROSS-EXAMINATION

BY MR. FRANCIS:

Q. Thank you. Will Francis, USDA. Just a couple things
to clarify for the record.

    I think earlier it was clarified that when you say
WPC 80, the 80 is referring to the percent protein?
   A. That is correct.
   Q. Okay. So that's a standard?
   A. Yes.
   Q. The equipment that you use to, and you only do WPC 80; is that correct?
   A. That is correct.
   Q. Okay. Is there different equipment that you would use to do WPC 34, or some lower percentage of protein?
   A. I believe it would be a similar type of equipment, just different engineering perhaps. Different types of membranes, a different size dryer. I think for the most part, you still need a pasteurizer or you still need a hose system, and so on.
   Q. Okay. And one more thing to clarify. On page 1, where you reference the generally acknowledged statement that you were asked a question about, you refer to 1.2 million pounds of whey per day. I just want to clarify, does that mean the unprocessed liquid whey that comes off of your cheese making? Is that the volume?
   A. That is correct. That's the --
   Q. I just want to clarify it was the pre-WPC 80 processed liquid volume, not the finished volume of WPC 80?
   A. Yeah, that's the whey that comes off the milk.
   Q. Okay.
   A. Unprocessed.
Q. Okay. Thank you.

A. And I did find some other testimony, I mean, not testimony, other folks have said that there's 2 million pounds of liquid whey to break even. So there's a range between 1.2 and 2 million pounds, so it is depending on who you talk to, but this is back in 2004. Perhaps the cost of buying equipment, the cost of construction have increased that, that break even, even higher.

Q. And I didn't hear anyone ask a question about your source of incoming milk. Do you buy directly from producers or do you source milk from other cooperatives?

A. We source milk from a cooperative.

Q. Okay. And do you have the ability in the -- in the finished products that you make, do you have the ability to receive non-Grade A milk to manufacture those products?

A. Well, we have the ability to receive milk. We don't, because all of our products are Grade A.

Q. Okay. So based on your company, you only receive Grade A?

A. Only Grade A.

Q. Okay. I'm interested in learning a little more about the products. And I know some of these questions are sensitive, I don't want you to reveal confidential business information. But you mentioned the Queso Fresco product is classified as 4b under the current CDFA classification system.
Are the other products you mentioned, Panela, Cremoso, cotija, Requeson, and I apologize for my pronunciation, are those all classified as 4b under the current California milk program?

A. Sure. Yeah. Those are all cheeses and those are all classified under 4b.

Q. Okay. And I don't know if you have looked at this, but in both proposals there are Federal Order classifications that would apply. And we even had an exhibit that was introduced that would kind of cross classify between the California, the current California system and the Federal Order system. Have you looked at your individual products to see if any of those would potentially change classification?

A. No, I have not looked at them.

Q. Okay. And then just quickly. The other products that you mentioned, the drinkable yogurts and the creams, those are currently under California's Class 2?

A. Class 2, yes.

Q. Okay. And the, I guess same question --

A. Right.

Q. -- would you expect them to change under the proposed Federal Order?

A. I would not expect them to change, but if it, that's why I am not sure. My question to you, does that change? Is it changing? I'm not sure. Is that what you are --

Q. It is possible, but I --
A. Okay.

Q. I would suspect for the drinkable yogurt, probably not, and for the creams probably not, but I'm not familiar with your specific products. Our standard answer is, we defer to the Market Administrator.

A. Got it.

Q. And then the final question I have relates to small business. And so I know you have a different perspective on whether your firm is a small business or not. But we do have a definition that we use for the purposes of these hearings, and for processing facilities, the Small Business Administration sets a standard of 500 employees or less for classification as a small business. And so the question is, would Marquez Brothers International fit into that classification of having 500 employees or fewer?

A. I think we're right at the borderline. At the plant we have less than 200, but the, it would, with the sales force and so on, it could be up to 500, perhaps a little more.

Q. Okay. I think that's all I have. Thank you.

JUDGE CLIFTON: Sure. Are there any other questions for Mr. Maldonado? Yes, Mr. Vandenheuvel.

CROSS-EXAMINATION

BY MR. VANDENHEUVEL:

Q. Rob Vandenheuvel, Milk Producers Council.

Yeah, Mr. Maldonado, I just wanted to clarify one thing
that I thought I heard that I wasn't sure, because it wasn't in
your written testimony. You were talking about some of the
challenges that you were facing leading up to the investment in
the whey processing facility, and you talked about managing a
hundred loads of milk coming into the plant and 80 loads of
whey going out. Did I hear that correctly?
A. That was hypothetical, to prove a point.
Q. Okay. So those were not --
A. No, I did that on purpose so I won't reveal my numbers.
Q. All right. That's all I have. Thank you.
JUDGE CLIFTON: Mr. Miltner?

CROSS-EXAMINATION

BY #1:

Q. Ryan Miltner.
Mr. Maldonado, I'm hoping you can help educate me a
little. What's the difference between a Queso Blanco and a
Queso Fresco?
A. Queso Blanco is a different process that is, it is
curd, not, it is not grinded. And it is, it has a different
temperature, a different cooking formula.
Q. How does that compare with Queso Fresco?
A. Again, different formulas.
Q. Are you familiar with the Journal of Food Science?
A. No.
Q. Okay. If a journal such as that said that Queso Fresco
is a high moisture cheese, would that be consistent with your understanding of the process and the finished product?

A. Of the what?

Q. Of the finished product?

A. For which product?

Q. Queso Fresco?

A. Yes.

Q. Okay. What's the shelf life of Queso Fresco?

A. I believe it depends on --

Q. Okay. If it is the vacuum, I'm sorry, I didn't mean to, I thought were you done. Go ahead.

A. It depends on what type of packaging.

Q. Okay. What are the different types of packaging that your products come in?

A. So we have bulk size and we have the retail size, the small ten ounce. So the bulk size will have a less shelf life, and the retail small size will have a longer shelf life.

Q. Are your packages typically vacuum packed?

A. Yes.

Q. Are the bulk packages vacuum packed?

A. That's correct.

Q. They both are?

A. Yes.

Q. If in addition to categorizing Queso Fresco as a high moisture cheese, but then also saying that, defining high
moisture cheese as over 50 percent moisture, is that consistent
with your understanding of Queso Fresco?

A. Again, you are leading me to say something about our
company, about our percentages, and high moisture. I prefer to
refrain from answering that question. You are generally in the
right vicinity, yes.

Q. Thank you. And earlier you testified that your
products are, particularly your cheeses, are distributed
nationwide, correct?

A. I think I corrected that by saying that we're mostly in
the Western states.

Q. Did you also say you are in the Midwestern states?

A. Midwestern states, yes. The Midwest to, we do have
some products on the, perhaps in the East Coast, but very
specific stores, perhaps.

Q. When you say Midwest, would that include areas like
Wisconsin, and Chicago, Kansas City?

A. Yes. I'm not sure how much presence we have out there,
since we do have a warehouse in Chicago, sure our Chicago
distribution center does have some presence out there.

Q. Does your company participate in the CDFA price
hearings?

A. Yes.

Q. Do you recall a hearing from, let me make sure I get
the date correct here. Do you recall a hearing in September of
2013, a temporary adjustment to whey valuation?
A. I don't recall specifically that date, but I do recall I have been involved in multiple hearings.
Q. Okay. In that hearing there was testimony that the cost to transport finished cheese to Wisconsin was approximately 8 cents per pound. Does that sound accurate to you?
A. That sounds accurate. That cost is now increased to 10 cents.
Q. And for the, for determining the cost of shipping, does it matter whether it is a pound of cheese, or a pound of yogurt product, or a cultured product, or anything?
A. The truck load easily takes about 40,000 pounds of weight. So we take the cost of what that, the cost of the transport, divided by those pounds, and come out with the pounds, cost per pound.
Q. So it matters less what the particular product is, it is just a function of weight and distance?
A. Right.
Q. Okay.
A. Our goal is to maximize the weight on that truck load.
Q. Great, thank you very much.
A. Sure.
JUDGE CLIFTON: What other questions are there for Mr. Maldonado? Mr. Francis?
CROSS-EXAMINATION

BY MR. FRANCIS:

Q. Will Francis, USDA.

Thanks to my colleagues, they did point out that in Exhibit 62, which, so that's the table, the classification, the dairy products that was prepared by CDFA and it's available on their website. And we did specifically request that that be introduced into the record to pick up the footnotes, so the footnotes that appear on the side of the page that are kind of in the shaded gray areas, it makes reference that certain products, when they are sold outside of the U.S., receive Class 4a. So I want to correct what I stated earlier, is that under the Federal Order we would not expect that these are -- let me just say that differently. Currently under the other Federal Orders, we do not price things differently. So a Class 2 classification, regardless of where the sale occurs, is a Class 2 classification.

A. Very good.

Q. Some of your products, we're not sure how they would fall in, if it is in more like a sour cream type product, or what's listed here is fromage fresh, and some of the yogurts that are on the back of the page also. That's it. Thank you.

A. Thank you.

JUDGE CLIFTON: And that's for Mr. Maldonado to take with him?
MR. FRANCIS: Yes.

JUDGE CLIFTON: Good, thank you. All right. I think that's it. Mr. Maldonado, thank you so much,

MR. ENGLISH: Wait, you never asked for redirect.

JUDGE CLIFTON: Redirect? Well, actually, I thought he did so well, I didn't think you would have any.

MR. ENGLISH: Well, you are right but there were a couple of things that got confused because of cross-examination.

REDIRECT EXAMINATION

BY MR. ENGLISH:

Q. So just to be clear, because, provided implication that you looked at something from Mr. Dryer. When you prepared your testimony, what we have called Exhibit 96, without knowing it was already in the record, had you put it in as Exhibit A to your testimony?

A. Yes.

Q. Okay. So we just, in order not to add yet another document to the record that was already in the record, we simply changed that Exhibit A to Exhibit 96, correct?

A. Correct.

Q. You had not seen any of Mr. Dryer's testimony, correct?

A. No.

Q. Or his exhibits?

A. No.

Q. Now, in answer to some questions Mr. Blaufuss --
JUDGE CLIFTON: You know, I just can't let it go. You had not seen any of Mr. Dryer's testimony; is that correct? No. No. I don't know what the answer is. Try it again.

MR. ENGLISH: Had you seen any of Mr. Dryer's testimony before Mr. Beshore asked you questions about it today?

MR. MALDONADO: No, I had not seen any testimony.

BY MR. ENGLISH:

Q. Thank you, your Honor. So Mr. Vlahos asked you some questions, and particular he focused on the minimum wage issue. And I believe what you said was the last time you looked at it, Wisconsin was at the federal minimum wage?

A. Yes.

Q. So if I told you that while you were up there, I looked at the United States Department of Labor Wage, and today, for 2015, Wisconsin is still listed as a state with minimum wage rate, the same as the federal. That would confirm what you had looked at a couple of years ago, correct?

A. Correct.

Q. Is that correct?

A. That's correct.

Q. That's all my questions, your Honor.

JUDGE CLIFTON: Thank you. Mr. Maldonado, I thank you very much for your testimony. It was very helpful.

MR. MALDONADO: All right. Thank you. I appreciate it.

JUDGE CLIFTON: I do have to say, I would hate to be in the
position of the United States Department of Agriculture with
repeated cautions that the gathered data has flaws, and an
inability to get answers from the horse's mouth because of
proprietary concerns. It's got to be very difficult.

I so appreciate the way Dr. Schiek had the cooperatives
get together, not the cooperatives, who did Dr. Schiek have get
together? Somebody.

MR. ENGLISH: Are you talking about the ESL testimony?

JUDGE CLIFTON: Well, okay, let me tell you what I'm
talking about, you can tell me who got them together. Somebody
got them together, because cooperatives wouldn't reveal to one
another, but they would reveal to an expert. Was that
Mr. Hollon?

MR. ENGLISH: That was Mr. Beshore that got his clients to
do that.

JUDGE CLIFTON: Okay. Mr. Beshore got that. So we got
usable information.

MR. ENGLISH: And ESL, Mr. Herbein put together information
with respect to a study.

JUDGE CLIFTON: Okay. Obviously somebody's got to figure
out how to give USDA the statistics they have got to have to
make an informed decision. I don't know how you are going to
do it, but it is so needed. All right. What time is it,
Mr. English?

MR. ENGLISH: It's 4:47.
JUDGE CLIFTON: So how quickly can we do Mr. Ahlem's testimony?

MR. ENGLISH: Not in that timeframe, your Honor. And he also, he has jury duty tomorrow, so I would rather we not try to start him.

MR. AHLEM: Can you get me out of jury duty?

JUDGE CLIFTON: No, I can't. That is a high duty. And I cannot get you out of that. All right. Then, Mr. English, what are your plans?

MR. ENGLISH: Well, I mean, we only have eight minutes before we have to give a summary, so I am not sure that's worth doing anything. I do have Mr. Zolin with a short statement, but I'm not sure I would get him on the stand and get it distributed before we quit.

JUDGE CLIFTON: I like the idea of your getting it distributed. Now, let's try that. Ms. Elliott, will this be 106?

MS. ELLIOTT: That's correct.

JUDGE CLIFTON: All right. This is Exhibit 106.

(Thereafter, Exhibit 106 was marked for identification.)

JUDGE CLIFTON: We'll take a moment while those documents are distributed.

MR. ENGLISH: Just to be clear, I referenced yesterday that actually last week I said we would have one witness about
Uniform Provisions. This is Mr. Zolin's testimony on Uniform
Provisions. I just want to set the stage.

JUDGE CLIFTON: Very well. They're still distributing the
exhibit, but Mr. Zolin, you remain sworn. Will you please
again state and spell your name?


JUDGE CLIFTON: If you do not have a copy of Exhibit 106,
would you raise your hand? Ms. Taylor in the back does not
have one. Mr. English, you may proceed.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. All right. So, Mr. Zolin, I have already examined you
in the past with your credentials. I think you can just go
ahead and read Exhibit 106.

A. Okay.

Introduction

My name is Alan Zolin. I'm the owner and sole
proprietor of Zolin International, LLC, a dairy supply chain
and dairy policy consulting company. I have been retained by
Hilmar Cheese Company to work with Dairy Institute of
California (DIC) to develop an alternative proposal to
Cooperative Proposal Number 1. I have worked with a task force
made up of a number of representatives from DIC member
companies, in order to develop and submit Proposal 2.

//////
Purpose

The purpose of my testimony today is to discuss the Part 1000 -- General Provisions of Federal Milk Marketing Orders and areas it has been incorporated into Proposal 2. In drafting Proposal 2, we looked at Section 1000 as an area where the general provisions would meld with our overall proposal and not require DIC to invent, I'm sorry, to reinvent the wheel in creating order language. In fact, after review, we found a significant portion of Section 1000 that we determined we would reference and not need to make any changes. It has been stated in previous testimony from the proponents of Proposal 1, that the attempt to simplify and eliminate unnecessary repetition of regulation should be a goal we aspire to achieve. Proponents of Proposal Number 2 agree with this goal. The areas of Section 1000 that Proposal 2 incorporates with no changes, are: Sections 2 through 6; Section 8; Sections 15 through 19; Sections 25 through 28; Section 41; Section 52; Section 70; Section 74; Section 77 through 78; Section 86; and finally, Section 90. There are sections included above that are labeled "Reserved". These sections are 17, 41, and 74. These sections have no language associated with them.

In the drafting of Proposal Number 2, we noticed a number of Section 1000 provisions would need to be added to the actual order 1051 language because of the termination of the
Western Order, Part 1135, and our proposed creation of a 9(d) handler (the purpose of this section I will discuss separately). I guess I should say at a later date. Section 1051.14 is an example of one such section. We saw that the language in Section 1000.14 had a reference to a terminated order, 1135.11 provision. We took the opportunity to remove that reference. Other Section 1000 areas where this occurred were Section 42 and Section 44. We believe that we made no substantive change, and I would like to cross out the word "intended", to those provisions, other than to remove the 1135.11 reference and add the 9(d) reference.

Finally, we made a small change to Section 1 by adding the words "unless otherwise specified". We felt its addition helped with clarity. This concludes my testimony on this issue.

JUDGE CLIFTON: Thank you, Mr. Zolin.

Ms. Elliott, on page 2 of Exhibit 106, will you strike the word "intended" in the next to the last line?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: And will you insert the word "and" between Section 42 and Section 44 at the beginning of that line.

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Thank you. Mr. English?

BY MR. ENGLISH:

Q. I just had a couple questions. Chip English. Just a
couple of questions, your Honor.

So Mr. Wegner already read a number of these, if not all of them, into the record.

A. That is correct.

Q. And we saw no need to read them in the record again, correct?

A. Yes.

Q. So you have just listed out those sections which I think cover topics 2 through 5 and 9, and so sort of a list of those where we made no changes whatsoever, correct?

A. That is correct.

Q. And a number of them, as you have indicated, are literally to conform to the fact that we no longer have a Western Order, correct?

A. That is correct.

Q. Or to insert a provision that you are going to talk about with respect to Topic 2 at a later date, which is the 9(d) proprietary bulk tank handler provision, correct?

A. That is correct.

Q. Okay. Your Honor, I'm done with the direct examination. I move admission of Exhibit 106 and I note that it is now 4 minutes to the hour, so if people want a preview, that's it.

JUDGE CLIFTON: Thank you.

MR. ENGLISH: Obviously he'll be available for
cross-examination tomorrow at some point.

JUDGE CLIFTON: All right. Very good. With regard to the admission into evidence of Exhibit 106, does anyone wish to question the witness before determining whether you object? No one. Is there any objection to the admission into evidence of Exhibit 106? There are none. Exhibit 106 is admitted into evidence.

(Thereafter, Exhibit 106 was received into evidence.)

JUDGE CLIFTON: Mr. Zolin, you plan to be here tomorrow?

MR. ZOLIN: I do.

JUDGE CLIFTON: Good. Thank you. You may step down.

Cross-examination of Mr. Zolin will happen tomorrow, if any. Mr. English?

MR. ENGLISH: So for a preview tomorrow, depending on who is here first thing in the morning and what our needs are, it may be that Mr. Zolin goes on then, or maybe because he's flexible, I think in reviewing today, it might have been, might have thought of it differently. I might have asked Mr. DeJong to wait. But as it is, because, I really, I apologized to Mr. Ahlem, he's not getting on today.

Mr. Ahlem has jury duty tomorrow. It may be that he gets excused in such a way that he can make it here tomorrow. And I obviously will defer to him tomorrow if, for some reason he does get excused.
Other than Mr. Zolin and Mr. Ahlem, we do have witnesses expected from Cacique, C-A-C-I-Q-U-E, a Mr. Mack Moore, M-O-O-R-E, and a Gil DeCardenas, G-I-L, De C-A-R-D-E-N-A-S, for Cacique, and for Farmdale, a Mr. Scott Hofferber, H-O-F-F-E-R-B-E-R.

And then, and I think I have been singing this song since last Wednesday, Mr. Blaufuss, tomorrow.

JUDGE CLIFTON: You know, I'm delighted that you have it all ready to go. And I know we don't ever get it all done, but I'm still delighted that you have it all ready to go.

MR. ENGLISH: Thank you, your Honor.

JUDGE CLIFTON: You're welcome. I will see you all here tomorrow. We'll go on record at 9:00. Ms. Elliott?

MS. ELLIOTT: Pamela Elliott with the USDA. Per your request, Judge, we have redacted the "Deposition" on some of the exhibits that we had up online. Those were six, and so all of those have been changed, and the updated version is up there now.


MS. ELLIOTT: You're welcome.

JUDGE CLIFTON: Very good. All right. We go off record at 4:59.

(Whereupon, the evening recess was taken.)

---00---

4697
COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA  )
 ) ss.
COUNTY OF FRESNO  )

I, MYRA A. PISH, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in
the State of California, holder of Certificate Number CSR
11613, issued by the Court Reporters Board of California and
which is in full force and effect.

I am not financially interested in this action and am
not a relative or employee of any attorney of the parties, or
of any of the parties.

I am the reporter that stenographically recorded the
testimony in the foregoing proceeding and the foregoing
transcript is a true record of the testimony given.

DATED: December 2, 2015

FRESNO, CALIFORNIA

[Signature]

MYRA A. PISH, CSR
Certificate No. 11613
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October 26, 2015

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