CERTIFIED COPY

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XIX

TRANSCRIPT OF PROCEEDINGS

October 20, 2015

Myra A. Pish, CSR No. 11613
397082

SINCE 1972

BARKLEY Court Reporters
barkley.com

(310) 207-8000 Los Angeles
(310) 207-8000 Century City
(916) 922-5777 Sacramento
(951) 686-0606 Riverside
(212) 808-8500 New York City
(312) 379-5566 Chicago
(415) 433-5777 San Francisco
(408) 885-0550 San Jose
(800) 222-1231 Martinez
(818) 702-0202 Woodland Hills
(347) 821-4611 Brooklyn
00+1+800 222 1231 Paris
(949) 955-0400 Irvine
(760) 322-2240 Palm Springs
(702) 366-0500 Las Vegas
(702) 366-0500 Henderson
(518) 490-1910 Albany
00+1+800 222 1231 Dubai
(858) 455-5444 San Diego
(800) 222-1231 Carlsbad
(800) 222-1231 Monterey
(516) 277-9494 Garden City
(914) 510-9110 White Plains
001+1+800 222 1231 Hong Kong

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

_____

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

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

Tuesday, October 20, 2015

9:00 a.m.

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

TRANSCRIPT OF PROCEEDINGS

VOLUME XIX

Reported by:

Myra A. Pish CSR
Certificate No. 11613

APPEARANCES:

U.S. DEPARTMENT OF AGRICULTURE:	Office of the General Counsel BY: BRIAN HILL, ESQ. LAUREN BECKER, ESQ.
U.S. DEPARTMENT OF AGRICULTURE:	WILLIAM RICHMOND, Dairy Product Marketing Specialist LAUREL MAY, Marketing Specialist PAMELA ELLIOTT, Marketing Specialist
CALIFORNIA DAIRIES, INC., DAIRY FARMERS OF AMERICA, INC., LAND O'LAKES, INC.:	Law Offices of Marvin Beshore BY: MARVIN BESHORE, ESQ. Hanson Bridgett, San Francisco BY: MEGAN OLIVER THOMPSON, 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
DEAN FOODS COMPANY:	ROB BLAUFUSS Senior Manager of Dairy Risk Management and Economics
HILMAR CHEESE COMPANY:	JOHN VETNE JAMES DEJONG
CALIFORNIA PRODUCER HANDLERS ASSOCIATION:	Stoel Rives BY: NICOLE HANCOCK, ESQ VICTOR LAI, ESQ.
SELECT MILK PRODUCERS:	MILTNER LAW FIRM, INC. BY: KRISTINE REED, ESQ.

I N D E X - V O L U M E 19

WITNESSES IN CHRONOLOGICAL ORDER

---o0o---

I N D E X - V O L U M E 19

INDEX OF EXHIBITS

---o0o---

TUESDAY, OCTOBER 20,2015 - - MORNING SESSION

JUDGE CLIFTON: We're back on record on October 20, 2015, it's a Tuesday. It is approximately 9:00 in the morning. We're in Clovis, California. My name is Jill Clifton. I'm the United States Administrative Law Judge whose been assigned to take in the evidence in this milk hearing. Today is Day 19 of the hearing.

I would like to take appearances now of others who will be participating today, beginning with those who are representatives of the United States Department of Agriculture, as am I.

MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N, Your honor, I'm here on time this morning -- Assistant to the Dairy Administrator, Dairy Programs.

JUDGE CLIFTON: Great. And I do want each person to state -- to state what his job is.

MR. RICHMOND: Good morning, William Richmond, R-I-C-H-M-O-N-D, with USDA, AMS Dairy Programs, and I'm a Marketing Specialist.

MS. MAY: Good morning, Laurel May, L-A-U-R-E-L, M-A-Y, I'm a Marketing Specialist with USDA AMS Dairy Program.

MS. ELLIOTT: Hello, I'm Pam Elliott, E-L-L-I-O-T-T, I'm a Marketing Specialist with USDA AMS Dairy Program.

MR. SWENSON: Good morning, Virgil Swenson, V-I-R-G-I-L, S-W-E-N-S-O-N, and I'm the Assistant Market Administrator of

the Central Order in Kansas City.

MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y. S-C-H-A-E-F-E-R, I'm an Agricultural Economist for the Upper Midwest Milk Marketing Order Federal Order 30, on detail with AMS Program.

MR. HILL: Good morning, I'm Brian Hill, B-R-I-A-N, H-I-L-L, and I'm an attorney with Marketing Regulatory and Food Safety Programs, Office of General Counsel.

MS. BECKER: Good morning, Lauren Becker, B-E-C-K-E-R and I'm an attorney at the Office of the General Counsel.

MR. BESHORE: Good morning, Marvin Beshore, counsel for the proponents of Proposal 1, California Dairies, Inc., Dairy Farmers of America, Inc., Land O'Lakes, Inc., that's M-A-R-V-I-N, B-E-S-H-O-R-E.

MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson, Megan is M-E-G-A-N, I'm an attorney with the law firm Hanson, Bridgett, H-A-N-S-O-N, B-R-I-D-G-E-T-T, I'm also co-counsel for proponents of Proposal Number 1.

JUDGE CLIFTON: Ms. Oliver Thompson, you were also here yesterday, but I didn't take your appearance right at 9:00. I want to note the fact that you were here.

MS. OLIVER THOMPSON: I was here, I just arrived late, unlike Mr. Carman.

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

MR. ENGLISH: Good morning, your Honor, my name is Chip

English, C-H-I-P, E-N-G-L-I-S-H, I'm a lawyer with the law firm of Davis, Wright, Tremaine, in Washington DC. I'm here representing the Dairy Institute of California, and this morning recognizing the change in government in Canada, Justin Trudeau.

MR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K, Economist with the Dairy Institute of California.

MS. KALDOR: Good morning, Rachel Kaldor, R-A-C-H-E-L, K-A-L-D-O-R, Dairy Institute of California.

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

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

MR. DRYER: Greg Dryer, D-R-Y-E-R, Senior Vice President Industry in Government Relations for Saputo Cheese USA.

MR. ZOLIN: Good morning, Alan Zolin, A-L-A-N, Z-O-L-I-N, I'm a Dairy Consultant representing Hilmar Cheese. I advise on dairy policy and dairy supply chain matters.

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

MR. COVINGTON: Good morning, my name is Calvin Covington. C-O-V-I-N-G-T-O-N, I'm here representing the Southeast Milk Incorporated and Cobblestone Milk Producers Cooperatives. And when I can get worked in the schedule, I'll be presenting a

brief statement on behalf of those two cooperatives.

JUDGE CLIFTON: Southeast Milk, Inc., is headquartered where?

MR. COVINGTON: In Belleville, Florida; and Cobblestone Milk Producers Cooperative is headquartered in Chatham, Virginia.

JUDGE CLIFTON: And how is the town in Florida spelled?

MR. COVINGTON: B-E-L-L-E-V-I-L-L-E.

JUDGE CLIFTON: And how is the town in Virginia spelled?

MR. COVINGTON: C-H-A-T-H-A-M.

JUDGE CLIFTON: And, Mr. Covington, if you have a business card, would you give one to the court reporter and give one to the Laurel May, who is on the front row here?

MR. COVINGTON: Yes, ma'am, I will.

JUDGE CLIFTON: All right. Thank you.

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

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

MR. LAI: Good morning. My name is Victor Lai, spelled L-A-I, I'm General Counsel with Producers Dairy Foods, a member of the California Producer Handlers Association.

JUDGE CLIFTON: Come back to the podium, if you will, please. So just when I learned to pronounce it "Lee" you are now saying it is "Lai". What happened?

MR. LAE: I was trying to avoid confusion. It is casually, personally it is pronounced Victor "Lee" has do with the Chinese pronunciation, in Mandarin it's produced "Lee", in Cantonese it is pronounced "Lie". But I was deferring to the court reporter, just making it simple. I see in the transcript it's -- I see in the transcript it is spelled, it's typed out, Victor Lai, spelled L-A-I and I thought that was -- I wanted to avoid that repetition.

JUDGE CLIFTON: No, no, we would like to call you as you would like to be called.

MR. LAE: I appreciate that, your Honor, I will proceed with Victor "Lee" but formally spelled L-A-I.

JUDGE CLIFTON: Thank you. I noticed that a few days you came up to the microphone and you didn't say your last name, you merely spelled it, and I didn't know what that was about. All right.

MR. LAE: One of those cultural generational things. Thank you.

JUDGE CLIFTON: All right. Others who are not part of a proponent or opponent team but still are participating, if you would come forward now.

MS. REED: Good morning, Kristine Reed, K-R-I-S-T-I-N-E,

R-E-E-D, I am with the Miltner law firm, M-I-L-T-N-E-R, and we represent Select Milk Producers.

MR. VANDENHEUVEL: My name is Rob Vandenheuvel, V-A-N-D-E-N-H-E-U-V-E-L, General Manager of Milk Producers Counsel here in California.

JUDGE CLIFTON: Welcome back. All right. Is there anyone else who has not yet come forward who anticipates testifying today, other than the witness who is already seated in the witness stand? All right. I see no one else at this time.

I would now like to turn to the witness in the witness stand. Would you please, I just, at this time, want to have him introduced as part of the participants and then I'm going to have him again, state his name and spell it later.

So would you please state and spell your name for us?

MR. METZGER: Erick Metzger, E-R-I-C-K, M-E-T-Z-G-E-R, General Manager of National All-Jersey, Inc.

JUDGE CLIFTON: Thank you. Now, as Mr. English is wise to note, we should have preliminary matters and announcements. I would like to begin with any from the USDA representatives.

MS. MAY: Laurel May with USDA. As always, we welcome you to the hearing and we're glad that you are here with us and hope that you will enjoy your time with us and feel free to participate. We invite anybody who would like to, to witness and to testify in this hearing. And also, anybody who would like to ask questions of the witnesses, please just come on up

to the podium if you would like to ask questions, and the Judge will acknowledge you.

We are broadcasting this session of the hearing via a live audio feed that can be accessed at www.ams.usda.gov/live. The court reporter is taking official transcripts of this hearing and they will be available approximately two weeks after the end of each hearing week. You can see those on our AMS dairy website.

We do have some copies of previous exhibits from this hearing and they are available on the table in the back of the room and we have refreshments that we would invite you to enjoy also.

Yesterday, at the end of the day, Mr. Bill Schiek or Dr. Bill Schiek, was testifying. And this morning, before he gets going we're going to hear from Mr. Metzger, and then, with your indulgence, we would like to invite Mr. Covington to testify next.

MR. ENGLISH: Good morning, again, Chip English. As we went off the record yesterday we indicated, of course, that we were prepared to have Mr. Metzger start today. And we were aware of the possibility of Mr. Covington, and we are happy to accede to allow him to be next, if that's what he wants to do. After that, this is now sort of the pre-staging that I promised everyday, so I was asked to give a pre-staging if I could. When that is complete, if there are dairy farmers, we would

then return Dr. Schiek to the stand to complete his direct exam, and discuss his exhibit. At which point, he would then be made available for cross-examination.

If that doesn't complete the day, we do have another witness available, Greg Dryer, whose introduced himself for Saputo, would be prepared to go forward if there is time. I don't think there will be time for yet another witness, and so we don't actually have one necessarily lined up, but we could, if we get to a point where suddenly things are speeding up, we'll try to do what we can. I think realistically with people we have in the room, that's what we have today.

And then just jumping forward tomorrow, we would, assuming that we're done with that, and if not, I think we need to interrupt, we would have the extended shelf life shrinkage discussion lined up for first thing tomorrow morning, and we have four witnesses to discuss that issue. The first witness sort of setting the stage, would be Mr. Al Zolin, who has introduced himself. The next witness would be a Mr. Carl Herbein, H-E-R-B-E-I-N. Following Mr. Herbein would be a Mr. Chuck Meek, M-E-E-K, and he's an engineer. So we'll mix up experts here a little bit. And finally, we would have Mr. Mike Suever, S-U-E-V-E-R for HP Hood, and that would be the ESL issue. So doing the best I can to give people advance notice of what our testimony looks like.

JUDGE CLIFTON: Now, you mentioned five witnesses and you

named four.

MR. ENGLISH: If I said five, I meant four, and I apologize.

JUDGE CLIFTON: Okay. Very good. That's very helpful. I appreciate the specificity.

MR. ENGLISH: I will do my best, without promises that I won't change my mind. I don't think I will. This is very much the line we could go in. And I guess if it gets to the point where Mr. Dryer doesn't get on today, then he would go after the ESL.

JUDGE CLIFTON: Are there any other announcements or preliminary matters? I would like to repeat the docket number as this case is known in the Hearing Clerk's office. I failed to do that yesterday, but I know it is on the face page of every transcript. It is, in brackets, [AO], that merely stands for agreements and orders. The docket number is 15-0071. We'll now resume testimony.

Mr. Metzger, I'll swear you in in a seated position.

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

MR. METZGER: I do.

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

MR. METZGER: Eric Metzger. E-R-I-C-K, M-E-T-Z-G-E-R. We have provided 20 copies of my written statement, along with a

set of, we provided 20 sets of tables, 1 through 12. I will say the tables should be accessed, should be in order 1 through 12. For the most part, my testimony refers to them in that order, there are a couple of times where it got to jump around to something else with another table. I fully appreciate that there are a lot of numbers on these tables, as I reach them in my testimony, I'll try to direct everyone to the numbers on those tables that are most pertinent to this testimony.

JUDGE CLIFTON: Now, shall we give your testimony the next number in order? It would be the first of your exhibits?

MR. METZGER: I believe that would be appropriate, yes.

JUDGE CLIFTON: All right. Then, I believe that is 81; is that correct, Ms. Elliott?

MS. ELLIOTT: That's correct.

JUDGE CLIFTON: 81 then will be the testimony which starts top line Notice of Hearing on a proposal. And I'm marking that then as Exhibit 81.

(Thereafter, Exhibit 81 was marked for identification.)

JUDGE CLIFTON: And I'm marking the exhibits as Exhibit 82.

(Thereafter, Exhibit 82 was marked for identification.)

MR. METZGER: I would say that electronic copies of both the testimony and the tables have been provided to Laurel May electronically, and so if anyone wants them forwarded in that

manner, they can simply contact Laurel and get them. Thank you.

JUDGE CLIFTON: I appreciate that very much. Sometimes with these densely-populated tables, it is actually easier to look at it online where you can magnify the resolution, whatever you call that. All right. Good.

Then you are welcome to proceed in any manner you wish, Mr. Metzger.

MR. METZGER: Thank you. And before I start with my prepared testimony, I do want to express my appreciation to everyone involved in this hearing to accommodate my time schedule to work me in on rather short notice. I understand some of you have been here five weeks, and may be here five weeks longer, whereas I'm parachuting in -- and to borrow a phrase from Chip English -- and leaving on short notice, and that's noted and appreciated.

Also, I want to thing the Department as one who has not been here for the entire hearing, I want to thank the Department for their efforts to make the hearing available via audio broadcast through the web. It's been helpful to me, and when I'm in remote locations to be able to tune in from time to time and understand what's going on in the hearing in that manner. So it's a definite improvement and something I would encourage for future Federal Order hearings as well.

That being said, I'll start in with my prepared

testimony. And I am an orphan, I don't have legal representation, so I'll introduce myself.

My name is Erick Metzger and I serve as the General Manager of National All-Jersey, Inc. (NAJ), a position I have held for ten years. NAJ's business address is 6486 East Main Street, Reynoldsburg, Ohio, 43068. I was raised on a dairy farm in Indiana, earned a Bachelor of Science degree from Purdue University in 1982 and an MBA from Franklin University in 1999. I was employed by the American Guernsey Association for ten years, including five years as its CEO. I have been with the Jersey organizations for the past 22 years. I have testified and filed comments in conjunction with previous Federal Order hearings.

NAJ is a national membership organization of over 1,000 milk producers, including nearly 100 members in California, and other people interested in supporting equitable milk pricing. Approximately 20 percent of NAJ members own dairy cattle other than Jerseys. NAJ's milk marketing policy is to advocate for milk pricing programs that will price milk based on its most valuable components in accordance with their use in consumer products. It is this policy that compels NAJ to testify regarding the proposals to establish a Federal Milk Marketing Order (FMMO) in California.

Both the Dairy Institute and Cooperatives' proposals for a California FMMO would utilize the multiple component

pricing (MCP) structure in place in six of the other ten FMMO's. If adopted, producers will be paid for the pounds of butterfat, protein, and other solids marketed, along with a Producer Price Differential (PPD). The current California Department of Food and Agriculture (CDFA) regulated milk price combines pounds of producer protein and other solids pounds into a single payment for pounds of solids nonfat (SNF). Therefore, the price signal sent by CDFA to producers is that protein and other solids have the same value. Historical FMMO prices clearly show that protein carries far more value than other solids (Table 9). From 2009 through 2014, the monthly FMMO protein price averaged $2.94 a pound, the other solids price averaged $0.31 cents a pound, and the Class IV SNF price averaged $1.22 a pound. A price of $2.94 per pound of protein is a much stronger incentive to increase protein production than the SNF price of $1.22 per pound.

Now, this is the first time I jump out of order on my tables, and it's very basically very simple. Table 9, page 10 of 12, there is a block about two-thirds away across the page.

JUDGE CLIFTON: Now, let us find Table 9 before you tell us about it. So it's the long pages, and not too deep in of the long pages.

MR. METZGER: Actually, the page that I'm looking at, at the bottom we have the footer 10 of 12.

JUDGE CLIFTON: Oh, all right. So once we found Table 9,

we look for page 10 of the 12 pages of 9.

MR. METZGER: And about two-thirds across the top of the page it is a block of columns labeled FMMO prices, and these, all of the FMMO monthly prices from 2009 through 2014 are included in Table 9. The bottom line on page 10 of 12 has the average prices, and that was the source of protein, the other solids in the Class IV SNF price in my testimony. Just providing a reference to where the -- where those figures came from. And of course, the classes and component prices were provided by USDA Dairy Program.

JUDGE CLIFTON: Thank you, this is very valuable.

MR. METZGER: We'll become more familiar with Table 9 later. Continuing testimony:

USDA has recognized the importance of incentivizing protein production dating back to the 1973 report "Milk Pricing Policy and Procedures, Part II, Alternative Milk Pricing Procedures," Report of the Milk Pricing Advisory Committee, U.S. Department of Agriculture. "(3) the long-term goal of maximizing total milk solids consumption consistent with the public interest. Such a policy should price milk to encourage increased production and consumption of milk protein, while valuing milk fat at a level more competitive with its substitutes."

JUDGE CLIFTON: Would you like to us make those little changes for the record copy, Mr. Metzger?

MR. METZGER: That would be fine, thank you.

JUDGE CLIFTON: All right. So, Ms. Elliott, on page 2 of Exhibit 81, we are going to change the word, where is pricing, which line are we in, Mr. Metzger, it's the fourth line, the word "pricing" will instead be "price"?

MR. METZGER: Correct.

JUDGE CLIFTON: And then the other one is even a tinier change, the last line we'll just add an "S" to "it", so that it says with "its" substitutes.

MR. METZGER: Yes, ma'am, thank you.

JUDGE CLIFTON: You're welcome.

MR. METZGER: In addition, the only practical approach available to producers to increase their SNF production is to increase their protein production. The Market Administrator Office for FMMO 30 (Upper Midwest) publishes an annual staff paper, "Analysis of Component Levels and Somatic Cell Count in Individual Herd Milk at the Farm Level." A summary of these staff papers from 2009 to 2014, which shows the monthly weighted average milk component levels for butterfat, protein, other solids, and SNF, along with the standard deviations for each component, is included as Table 1 to this testimony. Over that six-year time period, the standard deviation of other solids test averaged 0.09 percent, while the standard deviation of protein test averaged 0.16 percent. The difference in the standard deviations of the two components shows that producers

can impact protein tests significantly more than other solids tests through their decisions regarding a herd's feeding, genetics, and culling.

Data analysis later in this testimony also utilizes Table 1 for the standard deviations of the these components, along with the standard deviations for butterfat (0.29), and SNF (0.18 percent). A data set with distribution that is approximately normal, will have about 68 percent of the data values within one standard deviation of the mean, and about 95 percent within two standard deviations. NAJ chose to use milk that is two standard deviations higher than average to represent high component milk and to demonstrate the positive impact that incentivizing production of high component milk can have on the California dairy industry. Later testimony and analysis utilizes the month-to-month protein to SNF ratios from these FMMO 30 annual summaries in order to convert CDFA SNF pounds and tests, to pounds and tests for proteins and other solids which are used in FMMO pricing.

And I'll stop there and make a couple of comments about Table 1, understanding that it has the finest print, and I apologize for that. I believe it is the finest print of any of the tables I provide.

What I want to do is to draw your attention to the two sets of numbers on this table that are most important to future testimony. The first set of numbers is in the far right hand

column with the header 2009 to 2014 average protein to SNF ratio. Each of the previous six months, 2009 through 2014, have their own analysis of protein to SNF. For example, the six years of January average 0.352 as is shown in the upper right hand corner. If you go down that column of numbers, it becomes apparent that the ratio changes from month to month, and this was important as I got back into analyzing the PPD and converting California SNF ratios to estimated California protein levels needed to account for the variation from month-to-month.

The second set of numbers that are important are in the lower left hand column, a block of average standard deviation, butterfat, protein, other solids, SNF, that is the average of each of the annual averages for those four components for the six years that are summarized. Okay?

Continuing testimony:

Protein production is critically important for the California dairy industry. Higher protein milk increases yields of cheese, protein-standardized whey products, skim milk powder and whole milk powder, and also results in less fortification needed for Class 1 products. Examples of each of this situations follows.

Cheese Production

JUDGE CLIFTON: Shall we make that change on the record copy, Mr. Metzger?

MR. METZGER: Yes.

JUDGE CLIFTON: All right. Ms. Elliott, at the very bottom of page 2, we're just changing the Class Roman numeral I to Class Arabic 1 as it was meant to be

MR. METZGER: And unfortunately, that will be, that correction will be in several other points in this testimony.

JUDGE CLIFTON: No problem, but I would like the exhibit to -- although, you know when we look at a 1, it's not, I guess it's, I guess it is assumed to be Arabic unless it has its Roman characteristics, so all right.

MR. METZGER: Would you prefer I continue to differentiate?

JUDGE CLIFTON: Yes.

MR. METZGER: Okay. Very well. From 2009 to 2014, 44 percent of California --

JUDGE CLIFTON: Now, did you read in the heading? I think it's helpful if you read in the heading at the bottom of Page 2.

MR. METZGER: Very well. Heading: Cheese Production.

From 2009 to 2014, 44 percent of California's pooled --

JUDGE CLIFTON: Go ahead and start it again from 2009 to 2014.

MR. METZGER: Okay. From 2009 to 2014, 44.7 percent of California's pooled SNF production has been utilized in Class 4b products, cheese and whey (Table 2). Protein's impact on cheese yields is well-documented through the Van Slyke

Cheese Yield Formula.

A quick comment on Table 2. The only number of significance in here is on page 2, the lower right hand part of the page, average 44.7. The data in this table comes directly from CDFA's website, and all I did was to average the Class 4b SNF usage.

Returning to testimony:

The Van Slyke Cheese Yield Formula.

Cheese Yield = (((Butterfat*.90) + (True Protein *.827 - 0.1)) * 1.09)/0.62

JUDGE CLIFTON: Mr. Metzger, if I could stop you. I see here something I saw in other formulas in prior testimony, and that is that the little symbol which I would call an asterisk, actually represents a multiplication symbol in this formula. Is that common practice with these milk formulas?

MR. METZGER: I'm not sure about milk formulas, but I know it's common practice in the realm in which I work.

JUDGE CLIFTON: All right. Is it -- is it a business thing or an economics thing? I had not seen it, or at least had not noticed it.

MR. METZGER: I picked it up, actually, from my high school math, 140 years ago.

JUDGE CLIFTON: But I am older. So all right. Thank you. That's very helpful. And that's why it's so helpful when a witness will read a formula, because there are things in it

that we might not know. All right. Thank you. You may proceed.

MR. METZGER: Thank you. Milk pooled in California from 2009 to 2014 averaged 3.68 percent butterfat and 8.87 percent SNF. (Again, referring to Table 9.) Using the monthly protein to SNF ratios from Table 1 to convert SNF to protein, California pooled milk averaged 3.09 percent true protein. The Van Slyke cheese yield formula predicts that average component milk in the CDFA pool will yield 10.14 pounds of cheddar cheese containing 38 percent moisture (Table 3). However, milk that contains butterfat and true protein, two standard deviations above average, (4.26 percent fat, 3.41 percent protein) projects to yield 11.52 pounds of cheddar cheese.

And that is shown on -- if you take the data in the testimony, and on Table 3, and process it through the Van Slyke Cheese Yield Formula, those are indeed the numbers that are produced.

Whey Production

Higher protein milk also results in higher protein whey. The Van Slyke formula calculates the amount of protein utilized by cheese, and by default, the amount of protein left in the whey stream. The protein recovery portion of the Van Slyke cheese yield formula, (True Protein * .827 - 0.1) calculates the amount of milk protein that is utilized in the cheese. Subtracting the amount of protein utilized cheese, in

the cheese, from the amount of protein in producer milk --

JUDGE CLIFTON: Start again and go a little more slowly.

MR. METZGER: Very well. Subtracting the amount of protein utilized by the cheese from the amount of protein in producer milk, determines the amount of protein in whey. The Van Slyke cheese yield formula predicts that 100 pounds of average protein milk (3.09 percent) will have 2.55 pounds of protein utilized in cheddar cheese, leaving the difference 0.54 pounds, in the whey stream. 100 pounds of milk with protein two standard deviations higher than average (3.41) will have 2.81 pounds of protein utilized in cheddar cheese, leaving 0.60 pounds of protein in whey.

JUDGE CLIFTON: Now, I think that 3.41 being a percentage is important. So if you don't mind, I would like you to read that sentence again.

MR. METZGER: Very well. 100 pounds of milk with protein two standard deviations higher than average (3.41 percent) will have 2.81 pounds of protein utilized in cheddar cheese, leaving 0.60 pounds of protein in whey.

Whey products are critically important to the California dairy industry. Primary whey products are dry whey, whey protein concentrates (WPC's) and whey protein isolates (WPI's). Dry whey yields are minimally affected by the amount of protein in whey, because dry whey is produced by simply drying liquid whey. Dry whey is not protein standardized.

However, the amount of protein in liquid whey does have a direct impact on the yields of protein standardized whey products (WPC's and WPI's).

CDFA data on the state's whey product production only differentiates two types of products. All WPC's and WPI's comprise one category and other dry whey products comprise the second category. Given the limitations of the CDFA whey product data, NAJ turned to USDA's NASS Dairy Products Annual Summary which differentiates four categories of whey products: Dry whey, WPC 25.0-49.9 percent protein, WPC 50.0-89.9 percent protein, and WPI's. This NASS report is summarized in Table 4.

* From 2009 to 2014, the U.S. produced approximately 5.8 billion pounds of dry whey. Assuming a protein content of 12., on a wet basis, approximately 731 million pounds of whey protein were used in dry whey.
* During the same timeframe, 1.5 billion pounds of WPC, 25.0 to 49.9 percent protein, were produced. Assuming an average protein content of 33 percent, 508 million pounds of whey protein were used in WPC 25.0-49.9 percent.
* 1.2 billion pounds of WPC 50.0 to 89.9 percent protein were produced. Assuming an average protein content of 77 percent, 945 million pounds of whey protein were used in WPC 50.0 to 89.9 percent.
* 406 million pounds of WPI were produced. Assuming a

protein content of 89 percent, 362 million pounds of whey protein were used in WPI.

Nationally the six straight years from -- I'll start again.

Nationally, the six years from 2009 to 2014 saw 731 million pounds of whey protein used in dry whey compared to 1.8 billion pounds of whey protein used in the protein standardized whey products. More whey protein was utilized in whey proteins is utilized -- start again.

More whey protein is utilized in protein standardized whey products than in dry whey. Basic milk chemistry implies that higher protein milk produces higher protein whey, which in turn, results in increased yields of the whey, of the protein standardized whey products of WPC and WPI

JUDGE CLIFTON: Read that one again, please. You got it right, but I just want it all together right.

MR. METZGER: Very well.

Basic milk chemistry implies that higher protein milk produces higher protein whey, which in turn, results in increased yields of the protein standardized whey products of WPC and WPI.

Milk Powder Production

The production of skim milk powder (SMP) and whole milk powder (WMP), both of which are protein-standardized, is increasing and becoming a larger portion of the milk powder

market. CDFA produces an annual report, "Annual Dairy Data" which includes the state's production of nonfat dry milk and other dry milk products. Results for the years 2009 to 2014, are summarized in Table 5. Nonfat dry milk is not protein-standardized. Most of the products included in the other dry milk products category are either protein-standardized or have a protein minimum. In 2009, other dry milk products accounted for 13.0 percent of the combined total production of NDM and other dry milk products. By 2013, other dry milk products increased to 45.9 percent of the combined production of NDM and other dry milk products before tapering off to 35.1 percent in 2004.

JUDGE CLIFTON: In --

MR. METZGER: 2014, yes.

USDA's NASS dairy products annual survey provides separate totals for NDM, skim milk powder and whole milk powder. The NASS reports for 2009 thought 2014 are included as Table 6. National production of SMP and WMP as a percentage of total milk powder production, is similar to California production. In 2009, NASS reported SMP and WMP represented 15.7 percent --

JUDGE CLIFTON: Let me stop you and have you start that sentence again, please.

MR. METZGER: In 2009, NASS reported SMP and WMP production represented 15.7 percent of the combined total production of NDM, SMP, and WMP. By 2013, SMP and WMP production had grown

to 32.2 percent of the total before declining to 26.8 percent in 2014.

Skim milk powder production can serve as a proxy for the other protein-standardized products, including whole milk powder. Table 7 compares the yield of SMP from average and above-average component milk. Average producer milk with 3.68 percent butterfat, 3.09 percent true protein, and 5.78 percent other solids, will yield 8.78 pounds of nonfat dry milk (5 percent moisture and 35.3 percent crude protein) which in turn, will yield 9.58 pounds of skim milk powder standardized to 34 percent crude protein. Crude protein is the international standard for protein-standardized milk powders, and the vast majority of SMP is produced for the export market. Crude protein is 0.19 points higher than true protein, i.e., milk that contains 3.01 percent true protein will contain 3.20 percent crude protein. The manufacturing process to produce SMP is as follows:

And here we're going to go to Table 7. Basically, what's outlined in the next steps, points 1 through 17, are essentially on Table 7 of walking down through the calculation process of, back to my high school days, I'm showing my work.

For the first step is to separate the cream from the skim.

JUDGE CLIFTON: So you have already left Table 7?

MR. METZGER: No, I am on Table 7. Table 7, steps 1

through 17 describe the data that is in Table 7.

JUDGE CLIFTON: I see.

MR. METZGER: It shows the calculations that get from producer milk through the skim milk powder calculation.

So step 1 is to separate cream from skim.

2. The separation process cannot isolate all the butterfat in the milk into the cream. Industry standards are that 0.05 percent butterfat will remain in the skim.

3. Pounds cream is calculated as --

JUDGE CLIFTON: Is that the same as cream pounds, same thing?

MR. METZGER: Yes.

JUDGE CLIFTON: Okay.

MR. METZGER: Cream pounds, which in Table 7 there's a bold header, Cream 40 percent fat, and the first subhead under that is Cream, and the first column says 9.08, I'm describing the calculation to get to that point. Okay?

Cream pounds is calculated as:
(% butterfat in milk - percent butterfat in skim) / % butterfat in cream.

Pounds butterfat in cream equal cream pounds --

JUDGE CLIFTON: Let me stop you. I see the divided, it is in point 3 on page 5. It's a little hard to see, because it's in between a close parentheses and a percentage, but I see it there. All right. Thank you. Go ahead.

MR. METZGER: Yes, I should have left spaces. Pounds butterfat in cream equals pounds cream time percent butterfat in cream.

Cream that contains 40 percent butterfat, by default, contains 60 percent skim.

Pounds skim and cream = pounds cream - pounds butterfat.

Pounds protein and cream = pounds skim in cream * % protein in skim.

Pounds crude protein in cream = pound skim in cream * % crude protein in skim.

Pounds SNF in cream = pounds skim in cream * % SNF in skim.

Pounds skim available to produce NDM = pounds of milk - pounds of cream.

Now we're down to the heading that says Skim After Cream Removal.

Pounds butterfat in skim = pound butterfat in milk - pounds butterfat in cream.

Pounds protein in skim = pounds protein in milk - pounds protein in skim.

JUDGE CLIFTON: In what?

MR. METZGER: In cream.

JUDGE CLIFTON: Would you read number 12 again?

MR. METZGER: Pounds protein in skim = pounds protein in

milk - pounds protein in cream.

Pounds crude protein in skim = pounds crude protein in milk - pounds crude protein in cream.

Pounds SNF in milk = I'm sorry, point 14 again --

Pounds SNF in skim = pounds SNF in milk - pounds SNF in cream.

Pounds nonfat dry milk (5% moisture) made from skim = pounds SNF in skim/0.95.

Crude protein in NDM = crude protein in skim/pounds NDM.

And finally, pounds skim, SMP, at 34% protein and 5% moisture = (crude protein in skim/0.34)/0.95.

JUDGE CLIFTON: Mr. Metzger, would you go back on page 5, to point 17, and read it one more time four us?

MR. METZGER: Very well.

Pounds SMP at 34% crude protein and 5% moisture = (crude protein in skim/0.34)/0.95.

Essentially, this methodology is taking producer milk, producing, separating the cream, understanding that some of the protein in SNF that is in the producer milk will end up in the cream because of the skim portion of the cream. That let's us calculate the amount of protein SNF that is in the skim portion of the milk, that is available to produce nonfat dry milk and skim milk powder.

Using the same methodology, producer milk that is two

standard deviations higher than average (4.26% fat, 3.41% protein, 5.9%, 5.96% other solids) will yield 9.18 pounds of nonfat dry milk (5% moisture, 36.7% crude protein) which, in turn, will yield 10.42 pounds of skim milk powder standardized to 34% crude protein. The additional yield of 0.84 pounds of skim milk powder from each hundredweight of higher component milk supports the importance of implementing a pricing program that incentivize's protein production.

JUDGE CLIFTON: Now, in your testimony, if you said two standard deviations, is that the equivalent of two standard deviation units?

MR. METZGER: It is.

JUDGE CLIFTON: Thank you.

MR. METZGER: Solids-Not-Fat Requirement for Fluid Milk

California has set its SNF requirements for consumer fluid milk at higher, at levels higher than national standards. Citation: (Https://www.cdfa.ca.gov/ahfss/milk_and_dairy_food_safety/milk_standards.html).

Ordinarily, whole milk and nonfat (skim) beverage milk do not require fortification to meet California fluid milk standards, since raw producer milk contains enough SNF to meet the California standards for whole milk (8.7 percent) and for nonfat skim milk (9 percent).

JUDGE CLIFTON: Now, the sentence as written says solids

fortification, and you just read fortification. Is fortification for California milk always meant to be solids fortification?

MR. METZGER: Yes, ma'am.

JUDGE CLIFTON: Okay.

MR. METZGER: But reduced fat (2 percent) milk and low fat (1 percent) milk need to be fortified with more milk solids not fat than cows ordinarily produce.

In order to meet California standards, producer milk is fortified with additional SNF by adding condensed skim (primarily) or nonfat dry milk (rarely).

While Class -- should be Arabic 1 -- pricing --

JUDGE CLIFTON: All right. Let us stop right there and make that correction. We're on page 6 of Exhibit 81, and the second paragraph, second line, has a Roman numeral I that we will change to Arabic 1. Thank you, Ms. Elliott.

Mr. Metzger, you may start that sentence again.

MR. METZGER: While Class 1 pricing requires processors to pay for the additional SNF pounds, processors are allowed a fortification allowance where the cost of handling the nonfat dry milk and condensed skim used in the fortification process. The amount of the fortification allowance is deducted from pooled receipts before producers are paid. Data from the CDFA Milk Pooling Branch shows that for 2009 to 2014, the annual average of the fortification allowance was $6,079,931 (Table

8).

Producer milk that is higher in protein is also higher in SNF and requires less fortification to meet the California fluid milk standards, again, Table 8. CDFA's annual report, "Summary of Pool Pounds, Component Pounds, Producer-Handler Exempt Pounds" includes the pounds of SNF used in Class 1.

JUDGE CLIFTON: And Ms. Elliott, would you make that change? Thank you.

MR. METZGER: -- products, along with the pounds of fluid carrier in Class 1.

JUDGE CLIFTON: And Ms. Elliott, will you make that change? Thank you.

MR. METZGER: CDFA's report of "Summary of Fortification and Transportation Allowance" includes the pounds of SNF used for fortification. NAJ used the following calculations to determine how much less fortification would be required by using higher component producer milk.

And this is where we are referring to Table 8, and I realize that that the particular column headings of A, B, C, D, etcetera, did not print. So if you will follow along with me on Table 8, there is a general heading "Fortification" has subheadings, "Powder, Condensed Skim" that is direct data from CDFA, as is "Fortification SNF Pounds", the next column "Fortification Dollars" and the next column "Total Class 1 SNF."

Now, when we get to the next column, it is where my calculations come in beginning with point 1.

Pounds Class 1 SNF in producer milk.

JUDGE CLIFTON: Let me stop you. Ms. Elliott, would you please make that change on page 6, his number 1 point?

MS. ELLIOT: Yes.

JUDGE CLIFTON: Thank you. And read it again, if you will, Mr. Metzger.

MR. METZGER: Monthly Class 1 --

JUDGE CLIFTON: Monthly what?

MR. METZGER: SNF.

JUDGE CLIFTON: Start again, please.

MR. METZGER: Monthly pounds, Class 1 SNF in producer milk (Column J)= total pounds Class 1.

JUDGE CLIFTON: Ms. Elliott?

MS. ELLIOTT: Yep.

JUDGE CLIFTON: Thank you.

MR. METZGER: SNF (Table 9) - pounds SNF from fortification.

JUDGE CLIFTON: I think it would be helpful, since the columns don't have the headings on Table 8, for us to put them there now on our copies, if you don't mind, Mr. Metzger, because you have, for example, a reference to Column J and we could put the J there.

MR. METZGER: Yes, that is the only time that I reference

an Alpha column. The rest of the references are simply, if you look at, for example, on point 2, % SNF in producer skim, that is the heading of the next column. And I believe I follow that process across the rest of the spreadsheet. So that the heading of the column is, each of these points describes a column, and the introduction of that particular point is the actual heading of those columns.

JUDGE CLIFTON: All right. So there is only a reference then to Column J, so as we look at Table 8, that Column J has what heading as we can see it on the table?

MR. METZGER: Class 1 SNF from producer milk.

JUDGE CLIFTON: All right. I'm going to suggest, Ms. Elliott, that you label that Column J. Are you looking at it now?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: And I'm going to do that on my copy as well.

MS. ELLIOTT: For both pages?

JUDGE CLIFTON: Let's see, this has yes for both pages, please. Thank you. Thank you, Mr. Metzger. You have completed reading only number one; is that correct?

MR. METZGER: That's correct, I wanted to make sure that we were ready to proceed.

JUDGE CLIFTON: You may resume.

MR. METZGER: Point 2 is the next column. % SNF in

producer skim milk=pounds producer SNF/pounds producer skim milk.

Point 3 is the next column. Pounds producer skim milk in Class 1.

JUDGE CLIFTON: Ms. Elliott, thank you.

MR. METZGER: = pounds producer SNF + pounds fluid carrier in Class 1.

JUDGE CLIFTON: Thank you, Ms. Elliott.

MR. METZGER: Point 4 is the next column. SNF in producer milk --

JUDGE CLIFTON: Start again.

MR. METZGER: Point 4. % SNF in producer milk that is two standard deviation units higher than average producer milk = percent SNF in producer milk + (2*0.18), referring back to Table 1 for this standard deviation unit.

Point 5 is the next column. SNF pounds in producer milk + 2 SD = pounds producer skim * % SNF in producer milk + 2 SD. And in this case, and in other cases as we get further into the testimony, when I refer to producer milk + 2 SD, that is a label, not necessarily a mathematical equation in of itself. It is just the way I chose to label the higher component milk.

Okay. Point 6. Pounds SNF fortification required with producer milk + 2 SD = pounds Class 1 SNF --

JUDGE CLIFTON: Ms. Elliott? Thank you.

MR. METZGER: - pounds SNF in producer milk + 2 SD.

Point 7. Fortification allowance required with producer milk plus 2 SD SNF = pounds SNF fortification + 2 SD SNF * 9.87 cents per pound.

And finally, the last column,

Point 8. Fortification savings with producer milk + 2 SD SNF = fortification allowance - fortification allowance required with producer milk + 2 SD.

NAJ calculated the monthly impact on the amount of fortification required that producer milk had been two standard deviations higher than average milk. Annually from 2009 through 2014, producers would have saved an average of $1.7 million per year in Class 1 --

JUDGE CLIFTON: Ms. Elliott?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Thank you.

MR. METZGER: Fortification allowance from using higher component milk.

Summary of Importance of Protein to the California Dairy Industry

Changing California's regulated milk pricing to pay separately for pounds of protein and other solids will be an improvement over the current system which pays for pounds of SNF. Producers will be compensated for protein's greater value and will be incentivized to increase their protein production. The California dairy industry will benefit from increased

protein production through:

* Increased cheese yields.

* Increased yields of protein standardized whey products, WPC's and WPI's, more whey protein is utilized when WPC's and WPI's when it is utilized in dry whey.

* Increased yields of protein standardized milk powders, primarily SNP and WMP. Production of SNP and WMP is increasing as a percentage of the milk powder market and this trend is expected to continue.

* Reduced need and expense of fortifying Class 1 --

JUDGE CLIFTON: Ms. Elliott?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Thank you.

MR. METZGER: -- products with SNF from condensed skim and NDM.

JUDGE CLIFTON: I think we need a stretch break. This is intense. Mr. Metzger is working very hard and the court reporter is, too.

MR. METZGER: And it's about to get more intense. We're heading into the mother load.

JUDGE CLIFTON: All right. So where we're stopping, we're about to read a heading in the bottom one-third of page 7, and let us take, I think we should take 15 minutes. Please be back and ready to go at about 10:23, if you will. 10:23.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 10:24. We're resuming at the bottom of page 7, a new heading.

MR. METZGER: Analysis of Applying the Producer Price Differential to Components

The six FMMO's utilizing multiple component pricing pay producers for the Class III value of their milk (total pounds of butterfat, protein, and other solids) along with a PPD to account for the difference in the value of pooled Class Roman I, II, and IV milk from the Class III value.

JUDGE CLIFTON: Now, Mr. Metzger, you won't have to point out whether it's Roman or Arabic now. I mean, it might help for the people in the audio feed, so you may, if you choose to, but for the court reporter's purposes, she'll have this in front of her and she'll -- you can just say Class III if you would like.

MR. METZGER: Very well, thank you.

JUDGE CLIFTON: Now, you left out tiny word you left out the word "sold" in the parentheses, so if you don't mind, I would like you to take that sentence again.

MR. METZGER: Okay.

The six FMMO's utilizing multiple component pricing pay producers for the Class III value of their milk (total pounds of butterfat, protein, and other solids sold) along with a PPD to account for the difference in the value of pooled Class I, II, and IV milk, from the Class III value. The PPD is

calculated on a per hundredweight basis of all pooled milk, and it can be positive or negative, although PPD's are positive the vast majority of the time.

The Cooperatives' proposal for a California FMMO calls for the PPD to be assigned to the component values --

JUDGE CLIFTON: Start that sentence again, please.

MR. METZGER: The Cooperatives' proposal for a California FMMO, calls for the PPD value to be assigned to the component values of butterfat, protein, and other solids that are paid to producers. NAJ estimated what the monthly PPD's would have been in a California FMMO from 2009 through 2014 using both the conventional per hundredweight basis employed by the existing MCP, FMMO's, and by adjusting producer component values as outlined in the Cooperatives' proposal. The analysis is included as Table 9 and employ the following data and methodology:

Again, as previously, each of these points will correspond with a column header in the spreadsheet. The spreadsheet is the total of twelve pages, although the analysis would be four pages wide by three pages deep. So what I'm going to do, these points will flow from page 1, to page 2, to 3 to 4, okay?

And, again, on page, Table 9, page 1 of 12, if we will mark on the left hand side at the top, there's a general header of pool pounds, and the left hand column of that is titled

"Product." If you will mark that as C, and then moving to your right --

JUDGE CLIFTON: Now, go slowly, I'm going to ask that we capture this on the record copies as well. So I want you to go slowly so that we can make sure that those notations are made by Ms. Elliott simultaneously with your instruction. All right. So under the word product, we write C, you may continue.

MR. METZGER: Going to the right on that spreadsheet to the --

JUDGE CLIFTON: Or maybe we write it above the word product, what would you have in mind, Mr. Metzger?

MR. METZGER: My particular sheet has more room above than below.

JUDGE CLIFTON: Okay.

MR. METZGER: And then as we move to the right, the next to last column on that spreadsheet says total, and that's equivalent is equivalent to Column R.

JUDGE CLIFTON: All right. So all the way over to the right hand side, not the last column, but the next to the last column is R?

MR. METZGER: Correct.

JUDGE CLIFTON: Thank you.

MS. ELLIOTT: Does that only apply to page 1?

MR. METZGER: That would also apply to page 5 and to

Page 9.

JUDGE CLIFTON: All right. We'll make those additions on page 5 and page 9. All right. Now, as you walk us through these points, I want you to remember, Mr. Metzger, to, when you get to the point that is number 1, I think the best way to express that is just number 1.

MR. METZGER: Very well.

JUDGE CLIFTON: And try to remember at each one of them to repeat what number it is. I think it helps in the transcript to see we have started something new.

MR. METZGER: Are you ready to proceed?

JUDGE CLIFTON: I think so. Just a minute. Yes, we are.

MR. METZGER: Okay.

1. CDFA summary of pooled pounds and component pounds which includes pooled pounds of butterfat, SNF, and Class 1 fluid carrier --

JUDGE CLIFTON: Ms. Elliott? Thank you.

MR. METZGER: -- for California Class 1, 2, 3, 4a and 4b by month. That is columns C through R. All of that data is direct from CDFA. The next column refers to --

2. Pounds of Class 4b protein = 4b SNF *

JUDGE CLIFTON: Start again, please, on number 2.

MR. METZGER: Pounds of 4b protein = pounds 4b SNF * monthly protein to SNF ratio from Table 1. (FMMO 30 analysis of component levels.)

Moving to page 2. Obviously, the first to columns are year and month, so point 3 pertains to the third column.

JUDGE CLIFTON: And just so it's clear, point 3 in your testimony refers to the third column in your table?

MR. METZGER: On page 2, yes.

JUDGE CLIFTON: All right.

MR. METZGER: Pounds of 4b other solids = pounds of 4b SNF - pounds 4b protein.

Point 4 is the next column. Pounds protein pooled = pounds SNF pooled * monthly protein to SNF ratio from Table 1.

The next column is 5. Pounds other solids pooled --

JUDGE CLIFTON: Now, again, just to be clear, the next column on your table is number 5 on your testimony.

MR. METZGER: Is point 5. Pounds other solids pooled = pounds SNF pooled - pounds protein pooled.

The next column is point 6. Pooled butterfat percent = total pounds pooled butterfat/total pooled pounds producer milk.

The next column is point 7. Pool SNF percent = total pooled pounds SNF/total pooled pounds producer milk.

The next column is point 8. Pooled protein percent = total pooled pounds protein/divided by total pooled pounds producer milk.

The next column is point 9. Pooled other solids percent = total pooled pounds other solids/total pooled pounds

producer milk.

JUDGE CLIFTON: Now, when you say the next column is point 9, you don't mean for that to show in the transcript as .9, do you?

MR. METZGER: I do not.

JUDGE CLIFTON: You mean it to show as point, P-O-I-N-T, 9?

MR. METZGER: Yes, ma'am.

JUDGE CLIFTON: Okay, good.

MR. METZGER: Very well. Then the next columns are FMMO prices, which the column heading that has Class I skim, would correspond to Column AA and going under across to the right, under that general heading of FMMO prices, the column Class 4 SNF would be column AH.

JUDGE CLIFTON: Okay, I'm lost.

MR. METZGER: All right. That .9

JUDGE CLIFTON: Wait, let me back you up. At what page of Table 9 am I looking?

MR. METZGER: Page 2.

JUDGE CLIFTON: Okay. And am I in the broad heading of FMMO prices?

MR. METZGER: Yes, ma'am.

JUDGE CLIFTON: All right. And which of those am I in?

MR. METZGER: The column to the left of the broad heading FMMO prices is titled Class I skim. That equates to column AA.

JUDGE CLIFTON: That equates to column 8A?

MR. METZGER: I'm sorry AA, double A.

JUDGE CLIFTON: Okay. So Ms. Elliott, you and I will put Capital A, Capital A above Class I skim right about in the middle on page 2.

MS. ELLIOTT: Okay

JUDGE CLIFTON: All right. Mr. Metzger, we do that on what other pages in addition?

MR. METZGER: It would be page 6 and page 10.

JUDGE CLIFTON: All right. So we'll do that now. And Mr. Vetne, you may approach, or do you want the microphone or to show me?

MR. VETNE: No.

JUDGE CLIFTON: All right. Would you show that to Mr. Metzger and ask him if I can instruct accordingly?

MR. METZGER: Yes, you may.

JUDGE CLIFTON: Good. We'll mark all these now, before we go further, so going back to page 2, we have marked AA. The next column we will mark AB; the next column AC; the next column AD; the next column AE; the next column AF; the next column AG; and the next column AH. So that takes us through every column that's under the category FMMO prices.

MR. METZGER: Correct.

JUDGE CLIFTON: Mr. Metzger, do that on page 2 and what other pages?

MR. METZGER: Page 6 and page 10.

JUDGE CLIFTON: Okay. Give us a minute before you go on. Mr. Metzger, you may resume.

MR. METZGER: My point 10 on page 8 of my testimony.

USDA Dairy Programs announced prices for Class I skim, Class I, II, III, and IV components, Columns AA through AH.

The next column refers to point 11. Class I receipts = (pounds Class 1 fluid carrier = pounds Class Arabic SNF)

JUDGE CLIFTON: Arabic what?

MR. METZGER: Arabic 1.

JUDGE CLIFTON: And I think it might help if you will start 11 again, please.

MR. METZGER: Very well.

Class I receipts = (Pounds Class 1 fluid carrier + pounds Class Arabic SNF --

JUDGE CLIFTON: Arabic what? 1?

MR. METZGER: Arabic 1. Some of --

JUDGE CLIFTON: Let's take it again from the top, so we're on 11.

MR. METZGER: 11. Class I receipts = (Class pounds, Class Arabic 1 fluid --

JUDGE CLIFTON: I'm sorry, let me stop you.

MR. METZGER: I've only got 31 points to go through.

10 -- I'm sorry -- 11.

JUDGE CLIFTON: If it will help, because you have the Roman and the Arabic numbers the way you want them in this, you don't

have to read that part of it aloud.

MR. METZGER: So in other words, it would be acceptable only to make changes where Mr. Beshore's gremlins got me?

JUDGE CLIFTON: Exactly. And I never called them Mr. Beshore's gremlins, his good friend Mr. English called them that. All right.

MR. METZGER: All right. That will make things much simpler, thank you, your Honor.

Starting 11 again.

Class I receipts = (Pounds Class 1 fluid carrier + pounds Class 1 SNF) * Class I skim price per pound + (Pounds Class 1 butterfat * Class 1 butterfat price per pound).

JUDGE CLIFTON: All right. So just just explain to me what you have done here, in this 11.

MR. METZGER: I have calculated the Class I receipts on the milk that was pooled in California, for example, in that first line, in January 2009, that is the Class 1 California milk that was pooled, priced at the FMMO prices. I'm converting California product volumes to Federal Order values.

JUDGE CLIFTON: Thank you.

MR. METZGER: The next column, which will be the last column on page 2, Class 1 location differential.

Class I location differential = pounds Class 1 milk * $1.97 weighted average Class I differential.

Point 13 explains the weighted average Class

differential that I used in point 12.

Class 1 weighted average differential = (% Class 1 sales in -- I'll start that again.

Class 1 weighted average differential = (Class 1 Arabic, Class Arabic 1 --

JUDGE CLIFTON: You missed your percentage, I think. So again, your point 13 on page 8 of your testimony.

MR. METZGER: Class 1 weighted average differential = (% Class Arabic 1 sales --

JUDGE CLIFTON: Let us make that change. Ms. Elliott?

MS. ELLIOTT: Got it.

JUDGE CLIFTON: Thank you.

MR. METZGER: Northern California * $1.80 per hundredweight + % Class 1 --

JUDGE CLIFTON: Ms. Elliott?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Thank you.

MR. METZGER: -- sales Southern California * $2.10 per hundredweight)

CDFA's Milk Pooling Branch reports Class 1

JUDGE CLIFTON: Ms. Elliott?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Thank you.

MR. METZGER: Sales by region, and those data are included as Table 11.

USDA's Class 1 differential by County shows Northern California to be in the $1.80 per hundredweight zone and Southern California to be $2.00 -- per hundredweight should be added.

JUDGE CLIFTON: All right. So you are saying $2.10/CWT?

MR. METZGER: Yes, ma'am.

JUDGE CLIFTON: Period. All right. So just reading "and Southern California" picking up from there, read that remainder of that point 13.

MR. METZGER: And Southern California to be in the $2.10/CWT zone, Table 11.

Now, point 14 starts on page 3. Again, would be the third column from the left titled Class II, refers to point 14.

Class II receipts =((pounds Class 2 SNF + pounds Class 3 SNF) * Class II SNF price per pound) + ((pounds Class 2 butterfat + pounds Class 3 butterfat) * Class II price per pound of butterfat)

The next column, which will be 15. Class III receipts = (pounds 4b butterfat, should be pounds Class 4b butterfat

JUDGE CLIFTON: Okay. So times is correct; is that right?

MR. METZGER: Let's start from the beginning.

JUDGE CLIFTON: Okay.

MR. METZGER: Class III receipts = (pounds insert the word class --

JUDGE CLIFTON: Oh. All right. So all we're doing -- so,

Ms. Elliott, are you with me?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: We're just inserting the word "class".

MS. ELLIOTT: Okay.

JUDGE CLIFTON: All right. Mr. Metzger?

MR. METZGER: Class 4b butterfat * Class III butterfat price per pound) + (pounds Class 4b protein * Class III protein price per pound) + pounds again class --

JUDGE CLIFTON: All right. Ms. Elliott, are you there?

MS. ELLIOTT: Yes.

MR. METZGER: 4b other solids * Class III other solids price per pound)

JUDGE CLIFTON: All right. And just to be sure, would you please re-read your point 15 on page 8?

MR. METZGER: Very well.

Class III receipts = (Class --

Point 15. Class III receipts = (Pounds Class 4b butterfat * Class III butterfat price per pound) + (pounds Class 4b protein * Class III protein price per pound) + (Pounds Class 4b other solids * Class III other solids price per pound).

Point 16, Next Column, refers to the next column entitled Class 4.

Class 4 receipts = (Pounds Class 4a SNF times Class 4 SNF price per pound) + (pounds class

JUDGE CLIFTON: Ms. Elliott, are you there?

MS. ELLIOTT: No.

JUDGE CLIFTON: In 16, nearly the end of the first line, there's a 4a but it needs the word Class in front of it.

MS. ELLIOTT: Okay.

JUDGE CLIFTON: So just starting from what's in that parentheses, Mr. Metzger.

MR. METZGER: Very well. Pounds Class 4a butterfat * Class 4 price per pound butterfat).

And then the next column is 17. That column titled Total. Total pooled receipts = sum of Class I, Class I location differential, Class II, Class III, and Class IV receipts.

The next column, 18. The next column is titled Transportation Net. The transportation credits and allowances used are the historical monthly totals provided by CDFA in Table 10. NAJ did not attempt to recreate an estimate the transportation credits as proposed in the Cooperative proposal.

Point 19, Fortification. Gives the column titled Fortification. The fortification allowance used is the historical fortification allowance provided by CDFA.

Next column, Quota, Net of RQA, is point 20. Quota premium, net of Regional Quota Adjuster was provided by CDFA.

Next column, MA Fee, is point 21. The Market Administrator fee is priced at $750,000 per month. This total

reflects both the approximate monthly cost of CDFA's Milk Pooling Branch and the typical MA office assessment rate of 2 cents per hundredweight for member milk and a variable higher rate for independent milk.

The next column, Total, refers to point 22. Total pool deductions = sum of transportation fortification allowance quota and MA fee.

The next column, Net to Producers, point 23. Net to producers = total pooled receipts - total pooled deductions.

The next column, Class III Value is point 24. Class III value = (pooled pounds protein * protein price per pound) + pooled pounds butterfat * Class III butterfat price per pound) + (pooled pounds other solids * other solids price per pound)

The next column, PPD total, is point 25. Pooled PPD value = net to producers - Class III value.

Next column, PPD per hundredweight is point 26. PPD per hundredweight = pooled PPD/total hundredweight of pooled milk.

Now, in Table 12, we can move to page 4.

JUDGE CLIFTON: Okay. Now, are you taking us to Table 12 or are we staying in Table 9?

MR. METZGER: We are in Table 9. We can go to --

JUDGE CLIFTON: Where do you want us to go?

MR. METZGER: Let's continue, I think, let's continue to work through Table 9. I think Tables 10 and 11 are fairly self-explanatory, and we can get back to them once we have worked through the entire PPD calculation. I would rather do that than jump back and forth, if that's okay.

JUDGE CLIFTON: Sure. So what page should I have open in my tables?

MR. METZGER: In your tables you should be on Table 9, Page 4.

JUDGE CLIFTON: Okay.

MR. METZGER: The columns following year and the month. The next three columns are Percent PPD-F; Percent PPD-P; and Percent PPD-OS, that refers to point 27.

The percentage of the PPD to be assigned to each of the three components (butterfat, protein, and other solids) for 2009 through 2013 was obtained from analysis done by Dr. John Newton and published by Dairy Markets and Policy Information Letter Series, "Interpreting Proposed Language for the California Federal Milk Marketing Order". NAJ calculated the percentages for 2014.

The next column on Table 9, Dollars PPD Protein, refers to -- references back to point 28.

Oops, I skipped a column. The column, Dollars PPD-F in Table 9, refers to point 28 in my testimony on page 9. PPD value assigned to butterfat = total PPD value * percent PPD

butterfat.

The next column is point 29. PPD value assigned to protein = total PPD value * percent PPD protein.

The next column refers to point 30. PPD value assigned to other solids = total PPD value * percent PPD other solids.

The next column, Dollars PPD/Per Pound Fat refers to point 31. PPD per pound butterfat = PPD butterfat value/pounds pooled butterfat.

The next column refers to point 32. PPD for pound of protein = PPD protein value/by pounds pooled protein.

The next column refers to point 33. PPD for pound other solids = PPD other solids value/pounds pooled other solids.

The next column, Producers Fat Dollars, is point 34. Producer butterfat price = Class III butterfat price + PPD per pound butterfat.

The next column is point 35. Producer protein price = protein price + PPD per pound of protein.

The next column is point 36. Producer other solids price = other solids price plus PPD per pound of other solids.

The next column that is titled Percent F + 2 SD is point 37 in the testimony. Percent butterfat + 2 standard deviation = pool butterfat percent + (2 * 0.29).

Next column is point 38, percent protein + 2 SD =

protein pool protein percent + (2 * 0.16).

The next column, Percent Other Solids + 2 SD = pooled other solids percent + and that should be a plus not an equal.

JUDGE CLIFTON: All right. So Ms. Elliott, we're on page 9 of the testimony, we're in number 39, nearly at the bottom, and nearly at the end of that line there's an equal before a parentheses. And we're going to change the equal to plus.

MS. ELLIOTT: Okay.

JUDGE CLIFTON: So 39, again. Percent other solids + 2 SD = pooled other solids percent + (2 times 0.09)

And column 40, PPD per hundredweight + 2 SD = ((percent butterfat + 2 SD * PPD per pound butterfat) + (percent protein + 2 SD * PPD per pound protein) + (percent other solids + 2 SD * PPD per pound other solids))/hundred.

Now, before I go on with my testimony, let's refer quickly to Tables 10 and 11. Table 10 is the transportation allowance and credits. This information is direct from CDFA. There is no NAJ analysis done on this, it's simply the data set that which used in Table 9 for the PPD calculation.

Table 11, Class 1 sales, also comes direct from CDFA. It shows Class 1 sales in Northern California and Southern California. NAJ analysis starts about two-thirds down the page with a row that is titled Northern to Southern ratio, where I calculated the Northern, the sales in Northern California to Southern California for each year, 2009

through 2014. I did an overall average ratio of those six years, then incorporated USDA's Class I differentials for Northern and Southern California, and that's where I came up with the weighted average of $1.97 per hundredweight, which was used in the Class 1 differential calculation back in Table 9. All right?

JUDGE CLIFTON: Good.

MR. METZGER: Very good. Restarting testimony on page 10, at the top:

NAJ's analysis found the PPD to be negative 46 out of the 72 months, or nearly two-thirds of the months included. The average monthly PPD is -$0.27 per hundredweight. When the PPD is distributed across components, as requested in the Cooperatives' proposal, the average monthly PPD is -$0.03 per pound of butterfat, -$0.05 per pound of protein, and negative less that $0.01 per pound of other solids. The analysis determined that the PPD would average -$0.31 per hundredweight for higher component milk that (+2 SD).

As outlined and documented earlier in this testimony, changing California's regulated milk pricing to be based on protein and other solids, instead of SNF, will send producers the proper economic signal to increase their protein production. However, the proposal to distribute the pool's PPD value to component values will partially negate the incentive to increase component production. Given that PPD's will be

negative nearly two months out of every three, component values to producers will be discounted two-thirds of the time. Furthermore, the Cooperatives' proposal that the PPD be apportioned among the components relative to their value in the total Class III value, results in the largest negative PPD value being assisted to the most valuable component. Economic convention and logic would be to incentivize production of milk's most valuable component not to apply the largest discount to its price. In addition, higher component milk represented in this analysis by milk that is two standard deviations higher than average milk on a per hundredweight basis will be discounted more than average component milk, even though the higher component milk provides greater benefit to the California dairy industry.

NAJ urges the Secretary to reject the proposal to assess the PPD value to milk components, because PPD's will be negative most months. Production of milk components should be incentivized in California, and this PPD proposal will, instead, dis-incentivize proponent production. Instead, if an FMMO is recommended for California, the PPD should be calculated and distributed to producers on the basis of hundredweights of milk pooled, as it is done in the other FMMO's utilizing multiple component pricing.

Cooperatives Proposal for Pool Plant Provision

NAJ opposes the Cooperatives' proposal to classify all plants in the marketing area receiving Grade A milk, as pool plants.

First, while the Cooperatives' proposal provides exemptions for certain Class I plants, similar exemptions are not proposed for manufacturing plants. Specific pooling exemptions are proposed for producer-handlers with less than 3 million pounds of Class I distribution per month, and other Class I plants with route distribution less than 150,000 pounds per month. These same Class I exemptions exist in the other FMMO's. However, the Cooperatives' proposal does not provide exemptions for any manufacturing plants. Such exemptions are not needed in the other FMMO's because pooling manufacturing milk is optional, and any manufacturing plant, regardless of capacity, can simply out not to pool their milk. NAJ believes that at a minimum, the California FMMO should provide exemptions from pooling to manufacturing plants that meet the same milk source and monthly volume criteria as exempted Class 1 plants.

NAJ proposes that producer-owned manufacturing plants processing less than 3 million pounds of milk per month of only their own milk, and any manufacturing plant processing less than 150,000 pounds of milk per month, be exempted from pooling. Due to FMMO price formulas that set the Class I price as the higher of the advanced Class III or IV price, the

regulated price for Class I milk is higher than the regulated price for manufacturing milk most months. NAJ believes that if some of the marketing area's plants with the highest milk value -- I'm sorry, I'll start that sentence again.

NAJ believes that if some of the marketing area's plants with the highest value milk Class I warrant exemption from pooling, the same pooling exemption should be provided to manufacturing plants meeting the same criteria as the exempted Class I plants.

NAJ's second objection to defining all plants in the marketing area as pool plants is that this provision does not exist, and has not been proposed in any other FMMO. In the other FMMO's, manufacturing milk is incentivized to be pooled in order to receive the order's PPD's, which are positive the vast majority of months. About ten years ago, depooling manufactured milk became problematic in some FMMO'S because manufacturing plants had the option to depool all their milk for any month that an Order's PPD was negative and then immediately reassociate all their milk with the pool the following month if the PPD became positive. This issue was addressed by amending FMMO pooling provisions. The approved changes did not reclassify all plants in the marketing area as pool plants, and, in fact, that option was not part of any hearing proposal. Instead, FMMO provisions were changed to restrict how much milk a manufacturing plant could pool in a

given month to be based on a percentage of the milk the plant pooled the previous month. The revised pooling provisions incentivized manufacturing plants to pool a significant amount of their milk in the occasional months that PPD's were negative. While manufacturing plants and the producer supplying those plants stand to make money by depooling milk in months with negative PPD's, the strict repooling provisions mean the plants and producers will forego PPD revenue the following months when PPD's are likely to be positive. NAJ supports implementing pooling provisions and restrictions similar to those in other FMMO's for a California FMMO.

The ability to depool milk also serves a vital role in balancing the milk supply. To quote a long-time colleague and friend of the dairy industry, Ben Yale, "In order for there to be enough milk all of the time, there needs to be too much milk some of the time."

NAJ's analysis found PPD to be negative 46 out of the 72 months for -- whoa -- I went backwards instead of forwards. Strike that. Let's go to 12 instead of 10, page 12 instead of 10, shall we? Thank you. Excuse me.

Some manufacturing plants exist primarily to balance the milk supply during the times of too much milk. These plants run at full capacity only part of the year when milk supply outpaces conventional processing capacity. The rest of the year, these balancing plants operate on reduced schedules

or may shut down entirely. Due to their irregular processing schedules, their cost, and therefore, their make allowances, are greater than those of manufacturing plants that can run at full capacity nearly all the time. These balancing plants can offset their higher costs by purchasing milk for less than class value when surplus milk is abundant. The Cooperatives' proposal requiring all plants to be pool plants, eliminates the option for below class sales and will greatly hinder, if not eliminate, the ability of balancing plants to be competitive. The elimination of these balancing plants will lead to increased disorderly marketing by requiring milk to be hauled farther to find processing, available processing capacity, or even an increase of milk being dumped.

Dairy Institute Proposal for Class III and IV Prices

Put a caveat in here in that I appreciate that the Dairy Institute has not put in a proposal yet, but this testimony is based on their proposal that was submitted as part of the hearing request, so NAJ is anticipating that this will, indeed, be part of their proposal presented. Back to my prepared testimony:

Different price formulas between orders can, and do, lead to disorderly marketing. The regulated prices in the three FMMO's in the Southeastern United States, Orders 5, 6, and 7, are based on fat and skim values, while the surrounding

FMMO's are based on multiple-component pricing. NAJ observes milk movement into and out of Orders 5, 6, and 7 based on its component levels and component prices instead of serving market needs or to promote marketing efficiency. In the overlapping milk sheds serving the three Southeast markets which use fat-skim pricing, and the neighboring Southwest, Central, Mideast, and Northeast markets, which use multiple component pricing, incentives are created by regulation rather than the -- should insert a word "the" so I'll start that sentence again.

In the overlapping milk sheds serving the three Southeast markets which use fat-skim pricing and the neighboring Southwest, Central, Mideast, and Northeast markets which use multiple-component pricing, the incentives created by regulation, rather than efficiency can be significant.

JUDGE CLIFTON: All right. We'll be happy to insert that "the". Page 12, in the middle of the page, we'll insert the word "the" just between "pricing," and "incentives".

MR. METZGER: High-protein milk produced in the Southeast market or in the nearby milk shed is encouraged by multiple-component pricing to be marketed to maximize component income. This draws available milk away from fluid use in the Southeast market, aggravating the deficit production that characterizes those markets. Conversely, low solids milk in the common milk shed is encouraged by fat-skim pricing to be

marketed under the Southeast milk order pools, because greater revenue is available under a pricing plan that does not account for less value in low protein producer milk. These marketing patterns, created by regulatory incentives, come at the expense of marketing efficiency.

Establishing unique price formulas for a California Order, which may, in turn, set precedence for other FMMO's, holds the potential for similar and efficient milk movement simply because of differences in regulated price formulas, rather than market need, market value, or market efficiency. Therefore, NAJ finds the Dairy Institute proposal which would establish price formulas for Class III and IV milk that would be specific to a California order, to be problematic. Producers and processors in every FMMO can claim production, marketing, and manufacturing conditions in their marketing area that are unique to their order. Establishing separate price formulas for a California Order would set a precedent that NAJ expects will be lead to other Orders unique price formulas for their Orders, most probably starting with the Pacific Northwest and Arizona Orders, given their proximity to California and their competition for similar markets.

The issues of price discovery and make allowances may well need to be updated, and perhaps even regionalized. An evaluation of a national surface map for milk used for Class III and IV products may be in order. Any such analysis

should include exported milk solids, given that exports account for 15 percent of milk solids produced nationally, including 30 percent of the milk solids produced in California (Table 12). NAJ believes these issues are best addressed through a hearing covering all FMMO's and not one individual order basis. Should the Secretary recommend an FMMO for California which includes Class III and IV price formulas specific to the order, NAJ suggests a delay in implementation of a Final Order until USDA can convene a national hearing covering the other Orders, to afford them the same consideration granted to California.

Real quick, Table 12 is the simplest table in this whole exhibit. It simply is the calculation showing that in 2013, U.S. milk solids exported at 15.5 percent, the source of that is the National Milk Producers' Federation, then the NASS USDA statistics published by California Ag Statistics, reported that 40 percent of the dairy exports came from California, and we have also established in this hearing that approximately 20 percent, 21 percent of U.S. milk production comes from California. So 15.5 percent of U.S. milk solids exported, times 40 percent dairy exports coming from California, divided by 21 percent, of U.S. milk production from California, leads us to 30 percent of California milk solids being exported. All right?

Heading, and what we have all been waiting for:

Conclusion

Implementation of FMMO pricing in California will provide a stronger price signal to produce protein than the current CDFA pricing. However, as outlined in this testimony, NAJ finds to be problematic, parts of the Cooperatives' proposal dealing with PPD calculations and pooling, and the Dairy Institute proposal requesting unique price formulas for Class III and IV milk in a California order.

Seeing that there are no questions, I will step down.

JUDGE CLIFTON: Mr. Beshore, would you like to begin the questioning of Mr. Metzger? Mr. Vetne, would you?

MR. VETNE: May I introduce a point of order?

JUDGE CLIFTON: Oh, admission of the exhibits?

MR. VETNE: Exactly.

JUDGE CLIFTON: Thank you. Mr. Vetne, I really do appreciate your participation in here. All right.

Is there, does anyone wish to question Mr. Metzger before determining whether you have any objection to the admission into evidence of Exhibit 81, his testimony? No one. Are there any objections of the admission into evidence of Exhibit 81? There are none. Exhibit 81 is admitted into evidence.

(Thereafter, Exhibit 81 was received into evidence.)

JUDGE CLIFTON: With regard to Exhibit 82, the tables, does

anyone wish to question Mr. Metzger before determining whether you have an objection? No one. Is there any objection to the admission into evidence of Exhibit 82? There is none. Exhibit 82 is admitted into evidence.

(Thereafter, Exhibit 82 was received into evidence.)

JUDGE CLIFTON: Mr. Beshore, would you like to begin the questioning?

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Thank you, your Honor, and thank you, Mr. Metzger. You are in a very select group of persons with your mastery of component pricing values in the industry, and I appreciate your contribution of that talent to the record here --

A. Thank you.

Q. -- and your testimony and exhibits. So I just got questions on a number of, number of things, a number of areas.

First of all, can you tell us, you know, for this hearing, a little bit about National All-Jersey -- a little bit more about National All-Jersey? Is National All-Jersey a participant in any capacity in the California market in terms of marketing milk or being involved in negotiating contracts for sales of milk?

A. No, we are not.

Q. Okay. You have about a hundred, nearly a hundred members in California, let's say. Do you know -- do you know their affiliations with other organizations in California?

The reason I ask is this. Okay? So we have got three proposed, three, the Cooperatives, the three largest Cooperatives, representing 75 percent plus of California's milk production are the proponents of Proposal 1. The free-trade associations of dairy farmers in California, California Dairy Campaign, Western United Dairymen, and Milk Producers Council, have all testified in support of Proposal 1 as well. Would your hundred members be members of those groups, either the trade associations and/or the cooperatives?

A. I can safely, I can't name particular members to particular groups, but I am confident that we have numbers, National All-Jersey, has members in California who are also members of all six of the organizations you quoted.

Q. Okay. So is National All-Jersey supporting a Federal Milk Marketing Order for the State of California?

A. Yes.

Q. Okay.

A. Because of its pricing incentive, it's beneficial, we believe, to all.

Q. Okay. Thank you. Now, let's talk about some of the particulars.

You know, I am not sure which exhibit it is here, but

Class 1 pricing, California's got this fluid carrier pricing which shows up on one of your exhibits, but you are familiar with that, I assume.

A. Not really with the Class 1 fluid carrier pricing. The reason that is it is in my testimony is in order to calculate total pounds of Class 1 milk, that being Class 1 -- California Class 1 SNF plus California Class 1 fluid carrier.

Q. Okay. So maybe you have haven't analyzed this and can't answer this question, but let me just throw it out. It appears that one of the impacts of having a fluid carrier, which is basically pricing a portion of the value, roughly, I think it is 75 percent or so, skim value of Class 1 just on a straight volume basis. You understand that, right?

A. Right.

Q. Okay. So one of the effects of that is that it devalues the solids value in Class 1, whether solids not fat, protein, whatever. Devalues, depreciates the portion of Class 1 value that is reflected in the solids prices. And I wonder if you have any thoughts about that from, you know, national -- from your perspective as promoting valuation of, you know, the solids in milk?

A. No, I really don't. I can't provide any specific analysis on that.

Q. Okay. So you haven't really looked at that?

A. No, I have not.

Q. You haven't prepared, for instance, the price of solids under that fluid carrier system, both presently in California and in the Dairy Institute proposal, that the price of Class 1 solids, for instance, are less than the price of Class 2 solids, Class 3 solids, Class 4 solids?

A. I have not looked at that.

Q. Let me ask you then, about the PPD concern. So as you indicated in your testimony on page 1, under an FMMO, the price per protein, which is presently included in SNF in California system at $1.22 a pound, would increase to $2.94 under an FMMO for the five or six-year period?

A. In that six-year time period, yes.

Q. Okay. And your analysis in, what is it, Exhibit 10?

A. PPD analysis is Table 9.

Q. Table 9?

A. Yes.

Q. Okay. The PPD analysis in Table 9 basically shows that instead of the protein price under the Cooperatives' proposal, instead of protein price being $2.94, it would be $2.91, correct?

A. I believe it would have been $2.89. It was a nickel difference.

Q. $2.89?

A. Yeah. The butterfat price difference was three cents.

Q. Okay. So if it were the case that when you did the

analysis of how this worked out, more months showed a positive PPD than a negative PPD, it would actually be on, the protein value would have been on the plus side. That is, it would be greater than $2.94, correct? I mean, in the months where the PPD is plus, the protein value is greater than $2.94; correct? In your analysis?

A. In the months that the PPD is correct, the PPD would add to the protein value.

Q. Okay. And --

A. In the one-third of the months where the PPD is shown.

Q. Right. But that would be a good thing, from your perspective.

A. It would be even better if they were positive two-thirds of the time.

Q. Okay. But -- but, I mean, you have testified it's positive a great majority of the time the rest of the system, but it is pretty obvious they are not going to be positive a great majority of the time in a California Federal Order, correct?

A. That's correct.

Q. Okay. So basically since they are minus, you would rather see it priced on, you would rather see that minus value priced on a fat-skim basis than, or just a straight volume basis?

A. Just a straight volume basis, as is done in the other

Federal Orders, yes.

Q. So what works your way you want it on protein, and when it doesn't, it's better to have it on fat-skim?

A. On volume.

Q. On volume, I'm sorry. Correct?

A. Correct.

Q. Let's talk about pooling a little bit, or maybe -- so there are two issues regarding pooling.

JUDGE CLIFTON: I'm sorry, I want to go back to your question, Mr. Beshore.

Mr. Metzger, you are not advocating a different system for the months --

MR. METZGER: I'm not.

JUDGE CLIFTON: Right. So the predicate to Mr. Beshore's question was a little misleading, suggesting that in the months where it was to the advantage of the Association, they wanted it to be different.

MR. BESHORE: I guess I meant if it were to the advantage the majority of the months, I think they would support.

MR. METZGER: If it were, if it were to the plus side the majority of the months, it would incentivize protein production for all California producers.

MR. BESHORE: Okay.

BY MR. BESHORE:

Q. And you would support that?

A. I would support that.
Q. Okay
A. But since it is negative, it is going to dis-incentivize, and actually butterfat production, and that's not to the benefit of the California Dairy Industry.
Q. Okay. The differences of, you know, five cents a pound protein and three cents a pound butterfat, by your calculations in Table 9?
A. That is correct.
Q. Okay. So on pooling and I think -- I think you had two issues there, one is the, you have the exempt plant or producer-handler --
A. Yes.
Q. -- perhaps situation, the other is inclusive pooling or mandatory pooling?
A. Yes.
Q. So if we can separate those out. You are not, in terms of the request to exempt small manufacturing plants, there's, that doesn't, the language for producer-handlers or exempt plants in other Orders doesn't provide that now, correct?
A. Correct. And it doesn't need to because small-scale manufacturing plants would not be, are not required to be pooled. If they opt not to be part of the pool, they simply opt not to be part of the pool.
Q. Right. But they can opt to be part of the pool now.

A. By meeting the qualifications as far as touch base days, diverting percentages, etcetera, they do have to meet criteria in the other Orders if they want to be associated with the pool.

Q. Correct. And they would, and I know a lot of artisan cheese plants in other Orders that just make a portion of their milk into cheese, or like to be pool producers. Isn't that a common thing?

A. I'm sure that it happens on the artisan cheese makers, some may choose to associate them with the pool. I have no idea what percentage of such plants that represents.

Q. Okay. So how would you expect that, how would you want that to work in California?

A. In California, at a minimum, the small-scale manufacturing plants that meet the same criteria as exempted Class 1 plants, should also be exempted, is our position. So if you have got someone who is, as I read the proposed language, if you have got someone that's milking 30 cows and converting all their milk into artisan cheese, they don't balance, they require no balancing and they provide no balancing to anyone else. As I read the language, that plant will be a pool plant in California, even though it would be below the, even though if that plant were distributing fluid milk instead of artisan cheese, they would be exempted because it would be less than 150,000 pounds of milk.

Q. Correct. But if they are less than 150,000 pounds and they make all their milk into cheese, they are just not part of the pool, right?

A. That would not be my interpretation as the co-op language as proposed, that all plants are pool plants, with exception, with exemptions provided for certain Class 1 processors, but I don't see where those exemptions are provided for manufacturing plants.

Q. So you are looking for that in the exempt plant category?

A. I am, at a minimum.

Q. Okay. Okay. Now, with respect to, with respect to pooling. First of all, your analysis in Table 9 of negative PPD's and such, didn't do any analysis of class, of the incentive in the California FMMO for Class 4 or Class 2 depooling, right? You were just looking at the Class 3 issue with respect to negative PPD's and depooling?

A. I'm not sure I understand your question, I'm sorry.

Q. Well, when we look at -- when you calculated that 46 out of 72, well, a negative PPD is one way to look at when there's an incentive to depool Class III milk, right?

A. Yes.

Q. Okay.

A. In the other Federal Orders, yes.

Q. In the other Federal Orders, and would be the same here

if that option was available?

A. If it were available, yes.

Q. Okay. But that doesn't -- that doesn't make any calculation of whether Class 2 or Class 4 plants would want to depool if they could?

A. I did not analyze that, that is correct.

Q. Okay. That's what I, that's what I tried to get out that first question, which wasn't very good.

If you were to analyze that, just from your experience in other orders, and the way this one works in terms of the quota, and other deductions that come off the pool, there's certainly times when Class 2 and Class 4 would want to depool, wouldn't you agree?

A. There may be, those times may exist, yes.

Q. Okay. As they do in other Orders now?

A. Yes.

Q. So that would mean, would it not, that there would be in a California Order, essentially not just two-thirds of the time, where Class 3 would want to depool, but you would have even depooling even higher percentage of time when you look at Class 2 and Class 4 data?

A. Perhaps.

Q. There's some question in your mind there.

A. Well, I don't want to say absolutely because I have not analyzed it.

Q. But in other Orders where we don't have the additional factor that leads to greater, more negative PPD's here, that's what you have analyzed, in fact, you have done a really good job at analyzing that because you put the MA fee in there as well as the fortification allowance and chargeable allowance going in there. I appreciate that.

Since in other Federal Orders that don't have those negatives before the PPD is calculated, Class II and Class IV presently depool, isn't it absolutely certain that there would be times in California that they would depool?

A. Yes.

Q. Okay. Did you do any, so in opposing the inclusive pooling when it comes to Class III, you want producer supply in these Class III plants to be able to keep their protein value when it is higher than pool price -- correct -- by depooling?

A. If the milk is -- essentially that would be correct. I mean, if the milk is depooled, then there is no required regulated minimum price to be paid on those milk components.

Q. And that's the reason why people depool?

A. Exactly.

Q. Okay. They want to keep all the value for themselves and not share it with the pool, right?

A. Right. And that's why in the other Federal Orders, when depooling became a problem six, eight, ten years ago, amendments to the Orders were made so that yes, you could still

depool your manufactured milk, but the process to get it reassociated with the pool was limited to like 115 percent of your previous month's pooling. So if you saw a "windfall", by depooling milk in a particular month with a large negative PPD, you had to temper your decision with potential that you would be foregoing positive PPD's in the ensuing months because of the restrictions on the amount of milk you could reassociate with the pool.

Q. Okay. But you haven't done any analysis here given quota, transportation pool, MA fees, all the factors that you have put into your table? You haven't, which don't exist in other Federal Orders, you haven't done any analysis to see whether a repooling limitation of 115, or 25, or 35, whatever it is, to see whether repooling limitation would actually work in this marketplace with the utilizations and all the other factors that go into this pool?

A. I have not analyzed that.

Q. That's all I have right now. Thank you very much, Erick.

JUDGE CLIFTON: Who next has questions for Mr. Metzger? Ms. Vulin?

CROSS-EXAMINATION

BY MS. VULIN:

Q. Good morning, Mr. Metzger.

A. Good morning.

Q. So I have some questions.

JUDGE CLIFTON: Just state your name, please.

MS. VULIN: Sorry, Ashley Vulin.

BY MS. VULIN:

Q. So I kind of want to go through and make sure I understand everything that you have been presenting, as it is incredibly complex. Just a simple question on page 1 of Exhibit 81, which is your testimony. When referring to other solids, are those -- what are the other solids?

A. The other solids is primarily the lactose in milk, also consists of some mineral content. Essentially, it is any, as the name implies, it's any solids in the milk, excepting protein and butterfat.

Q. And in all Federal Orders, is that considered all those kind of catch-all categories, those aren't broken out?

A. Other solids is not broken out into subcategories.

Q. Now I'm on page 3 of your written testimony. At the very top you discuss the Van Slyke Cheese Yield Formula. Who is Van Slyke?

A. The fella who invented this cheese yield formula.

Q. Do you -- where did this cheese yield formula come from?

A. Golly, now you are pre-dating my involvement with National All-Jersey. I could Google it.

Q. Is it a generally accepted --

A. It is a generally accepted formula throughout the industry for many, many, many years. The yield formulas predict the yield of cheddar cheese, specifically, generally a 38 percent moisture.

Q. And then just below that you discuss a true protein. What's a true protein and how is that different than the other types of protein that you have described? The crude protein in the statement?

A. For a long time the industry relied on the testing equipment in the industry measured what was referred to as crude or total protein, which also included the non-protein nitrogen that was in the milk. And when the non-protein nitrogen is not beneficial to cheese yield, the true protein is more representative of the casein that's in the milk that is captured in the cheese making process. And so, as testing equipment became more sophisticated and was able to measure more of the casein in the milk, then that's what became the industry standard, and the difference between the two is outlined is 0.19 percent, fairly consistent across milks.

Q. So throughout your testimony when you are referring to protein, are you referring to true protein or basic? What's the better term for not true but not --

A. Right. Crude protein and, yes, everywhere in my testimony where I refer to protein it is true protein, except for where I specifically designate crude protein.

Q. And crude protein is the international standard for analyzing the protein content?

A. At least for the international, for basing international trade on skim milk powders.

Q. So now I'm on page 4 of your testimony, the bottom paragraph. So in this paragraph you discuss that SMP and WMP production was 15.7 percent of total production in 2009, it grew in 2013, and then declined in 2014. What was driving these changes?

A. Primarily the export market. Virtually all SMP and WMP is made for the export market, and in 2013, that market was very strong, and so there was quite an incentive to produce those products. In 2014, international market for those products declined so production of those products declined also.

Q. So in looking at Table 6 of Exhibit 82 where you go through the production, this is driven, if not just by U.S. pricing models, but by international prices and the commodities as sold in the international market?

A. Yes, they play a strong role in that, in production of those products.

Q. So now I'm on page 5. So here you list out steps 1 through 17. Just generally to summarize, these steps show how skim milk powder is made and priced; is that correct?

A. Not necessarily priced, but it is a proof, it is a

proof of concept that higher-component milk will yield higher, will have greater yields of skim milk powder. And that is because skim milk powder is protein-standardized. And so what is shown in the column average milk, shows that when you take producer milk, separate out the skim, or separate out the cream to a level of 40 percent butterfat, that cream is going to be sick by default, is going to be 40 percent butterfat, 60 percent skim. But when you take, make the cream from the producer milk, the skim portion of that cream is going to take with it some solids nonfat and some protein, making those components not available in the overall skim portion of the milk to manufacture nonfat dry milk and skim milk powder. So when you are manufacturing skim milk powder and you want to project your yields, you have to account for the amount of milk solids that are going to be, shall we say, siphoned off with the cream, along with the butterfat that obviously goes with the cream.

Q. And the process for doing that is standardized. There's no way to capture more of that butterfat or less?

A. Well, if you want to get really complex, we could get into manufacture handler.

Q. I don't want to get that complex.

JUDGE CLIFTON: All right. So nobody could hear either of you in that exchange. So let's have Mr. Metzger finish his sentence about if you want to get really complex --

MR. METZGER: If you want to get really complex, we could have gone into the analysis of making skim milk powder when the fat is taken off as anhydrous milk fat, which would, which is 99 percent butterfat, leaving much more skim to make manufactured, to manufacture skim milk.

We have gotten to, for a proof of concept, I thought this was sufficient.

MS. VULIN: And I apologize for interrupting. I think I was trying to avoid going too down into the complex aspects of it.

BY MS. VULIN:

Q. So now I'm on page 6 of your written testimony. And in the first, I -- the second paragraph, I have a question. Who pays the fortification costs for fortifying milk?

A. The extra solids that go into the Class 1 product are paid for by the processor. However, there is additional handling required at the processor level in order to add those solids to the fluid milk, and so there is a fortification allowance credited back to the processor for their cost of handling the condensed skim in order to bring the producer milk up to the solids level required by State of California minimums.

Q. Does milk, so I'm in your third paragraph now and you say, "Producer milk that is higher in protein is also higher in SNF and requires less fortification to meet the California

fluid milk standards."

Does SNF and protein in milk move up and down in conjunction or can they, can they exist and move independently of each other?

A. The primary variable in SNF is protein. Other solids, if we refer back to Table 1, the analysis from the Order 30 FMMO office on the annual summary they put out on component levels in producer milk, the standard variation of other solids is much lower than the standard variation of protein. And protein and other solids combine to make SNF, so the primary variation in SNF is going to be the protein content of the milk.

Q. So --

JUDGE CLIFTON: So, in answer to her question, then they do move up or down together or not?

MR. METZGER: Yes, they do.

BY MS. VULIN:

Q. But not a perfect ratio since other components affect the SNF?

A. Correct. There is some variation in other solids, in the other solids portion of milk, so it's not going to be a perfect correlation, but it is highly correlative.

Q. What -- what creates the protein content in milk? Like, what factors go into increasing or decreasing protein yields to the cow?

A. To the cow? Her genetics, the feeding regimen, the weather. Protein tests generally are depressed in hot, humid weather. I would say those would be the primary -- the primary movers.

Q. So there are costs that go into producing higher component milk in terms of the breed and the feed?

A. Well, the main variable cost would be the feed. There are strategies to feed for higher protein content of milk. As far as, you know, and those results would be more immediate. The genetic changes in a herd would take longer term, but, yes, any, you know, prime, most of the dairy cattle in the United States are bred via artificial insemination, and in selecting genetics for use in your herd you can select for increased protein content, it's one of the many variable genetic selection tools that are available to producers.

Q. So now I'm at the top of page 8, which is the beginning of your highly impressive 40-part formula. So tell me if this summary is correct. So this formula essentially shows what monthly PPD would have been if the Cooperatives' proposal had been in place? Is that what you are showing here?

A. It actually does two things, actually maybe perhaps three. What it does is it takes the milk pooled in the California Order and applies Federal Order pricing formulas and values to that pooled milk and components. Then, using the PPD process that exists in the other multiple component orders, it

calculates what the PPD would be in the other component orders. Then, the next step, it applies the Cooperatives' proposal on PPD calculation to those same pool values and shows what those -- shows the results of the Cooperative proposal, PPD proposal. And then, lastly, I added in, I analyzed milk that would be two standard deviations on component levels higher than average milk to show what the PPD would be on -- would have been on high component milk.

Q. Okay. And the PPD relates to the protein because the protein affects what your PPD is, correct?

A. Well, it is, it is a factor in that the protein value impacts the Class III value, and the Class III value is the base value from which the PPD is calculated. The PPD is calculated on, using the relative values of pooled Class I, II, and IV milk to the value of pooled Class III milk. And so protein being one of the three drivers of Class III value. Protein does impact, protein values can impact the PPD.

JUDGE CLIFTON: What are the other two drivers?

MR. METZGER: Of Class III value?

JUDGE CLIFTON: Yes, please.

MR. METZGER: Butterfat and other solids.

JUDGE CLIFTON: Oh, okay. So it is no different from any other place we're talking about PPD?

MR. METZGER: Correct.

JUDGE CLIFTON: Okay.

BY MS. VULIN:

Q. Now I'm on page 9, but still looking at this formula, and I'm on step 27. So here you said you obtained some of your data from Dr. John Newton in a paper published in, by Dairy Markets and Policy Information Letter Series, entitled, "Interpreting Proposed Language for the California Federal Milk Marketing Order." Who is Dr. John Newton?

A. Currently Dr. John Newton is an Economist on staff at the National Milk Producers Federation. Prior to that he worked at the University of Illinois; and prior to that he has experience in two Market Administrator offices, one being the Mideast Order and the other being the Appalachian Order.

Q. Can you summarize for us what this analysis of paper, "Interpreting Proposed Language" that he wrote?

A. As it pertains to the PPD, what the Cooperatives are proposing is that the PPD value be assigned to the three component values, milk, fat, and other solids, relative to those components' contribution to the Class III value the previous year. For example, let's say in 2008, if you look at the Class III value of the year, for the year, if that Class III value, you know, we talked about protein, butterfat, and other solids contributing to the Class III value. If that total Class III value, if 50 percent of that value came from protein, and 40 percent of that value came from butterfat, and 10 percent of the value came from other solids, the

Cooperatives' proposal is that you take the PPD, and whether it's positive or negative, you take that PPD value, let's say in a given month it was a million dollars positive. You would assign half of that value, the 50 percent, to the value of protein, or half a million dollars; and 40 percent, or the $400,000, to the overall pool value of butterfat; and 10 percent of that value, $100,000, to the overall pool value of other solids.

Q. And that's what his paper was about?

A. That was part of what his paper was about.

Q. That's the part you focused on?

A. Yes.

Q. Is the paper publicly available?

A. Yes.

Q. So in regards your proposal on page 11 regarding manufacturers who, or excuse me, producer-owned manufacturing of Class III, for example, or IV products, as opposed to just limiting this three million pound exemption to Class I products, would it matter in your proposal where the milk came from? Would it have to be producer-owned or could it just be a smaller cheese plant that purchases milk from elsewhere?

A. What I am proposing, at a minimum, for manufacturing exemption would mirror the exemptions provided for Class I. In other words, a processor who is using up to three million pounds of only their own milk would be exempt, or a processor

processing up to 150,000 pounds of milk per month, regardless of source, be exempt.

Q. Now I'm on page 12 of your testimony. So I thought this was an interesting point about the overflow plants. Can you tell me a little bit more about how those work?

A. Essentially, you can have plants that, there are some plants exist that, in existence, that only operate in times of surplus milk, some butter powder plants have been that way. And in doing what was typically referred to as the "spring flush" when production is high in the country, those plants will crank up and receive milk and produce butter and powder. Other times of the year, say the hot summer months, when overall production is down and there's not surplus milk in the area, those plants may shutdown entirely.

There are other plants that may run on, let's say, two shifts a day, six days a week. But when milk becomes surplus, they may go to running three shifts a day, seven days a week. Obviously, that change in production schedule increases their cost. And the way they can recoup that cost in times of surplus milk, is to be able to -- let's say it's a cheese plant. They have the option in the other Federal Orders to buy excess milk for less than the Class III value. And by buying that milk for less, what's known as under class or less than Class III value, that's how they offset their increased cost in adding another days' production or adding another shift of

workers to their production schedule.

Q. And so it's really kind of the market at work to ensure that no milk is wasted, but if you are asking a plant to operate at these higher costs, then they need to be given some sort of incentive, like being able to purchase milk at a lower price.

A. If they can't offset their cost, they simply won't produce. They won't receive the milk.

Q. And you said the Cooperatives' proposal would essentially make that happen, so that it would no longer be profitable for these plants to operate, to be able to take on the surplus milk.

A. There will be situations where I would expect that plants would not take on excess milk that is available because it would not be profitable for those plants to operate, given what other, whatever additional cost they would incur for processing that additional milk.

Q. Now I'm at the bottom of that page. And the first sentence of the last paragraph. So would you agree with my summary that one of the problems with the Cooperatives' price formula is that it doesn't properly or adequately track market need, market value, and/or marketing efficiency, the three elements that you highlighted in that sentence?

A. So you are at the last sentence of the first paragraph under Dairy Institute Proposal.

Q. I'm sorry, I'm on the first sentence of the last paragraph.

A. Establishing unique price formulas for a California order. Actually, that is, shall we say, a critique of the Dairy Institute, what is expected to be the Dairy Institute Proposal, that separate Class III and IV price formulas be established for a California Order based only on Western product sales and Western plant make allowances.

Q. So -- thank you. Now I'm on Exhibit 82, the first table. And so these variations month-to-month in the average protein content, is this due to the variations you explained earlier, that weather and feed and those things can change that content?

A. Yes.

Q. And, last question. I'm just on the last table now, Table 12. And if you could just point out each of these four statistics that you have. Which of these two sources did they come from?

A. The U.S. Milk Solids Export Percent came from National Milk Producers Federation; the next two data points came from the web reference listed on that table; and then the third number, the 30 percent, is a calculation based off of the first three data selections.

Q. Okay. So the first three came from the sources and then the third is your calculation?

A. Yes.

Q. Thank you. No further questions.

JUDGE CLIFTON: Who next has questions for Mr. Metzger? Mr. English?

MR. ENGLISH: I'm happy to go, your Honor -- Chip English. I was just wondering whether, we have been going like an hour and 45 minutes, whether the court reporter -- who is nodding her head -- the witness. I'm not proposing lunch break, because I actually prefer to go a little longer in the morning so we have a shorter afternoon, but I'm wondering if now would be appropriate for at least a ten-minute break or something, and the court reporter is clearly nodding her head.

MR. METZGER: I believe we refer to it as nutrient management in our board meetings.

JUDGE CLIFTON: All right. I like it.

So a quick show of hands. Your choices are 15-minutes or 10. 15 minutes, how many of you want that? How many of you want 10? The majority want 10.

Please be back and ready to go at 12:20.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 12:24. Mr. English?

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Thank you, your Honor. Chip English.

I don't have very many questions, Mr. Metzger. Just for a moment on page 5, a clarification issue. When you discuss SMP or skim milk powder, on the top paragraph. You said that SMP is, that the vast majority of SMP is produced for the export market. In fact, there is no standard of identity under FDA regulations for skim milk powder, is there?

A. That is correct. However, I do notice when I went to the NASS annual product survey summary, there's a category SMP for animal feed.

Q. Okay. So the animals aren't subject to standards of identity, correct?

A. That would be correct.

Q. Okay. So basically, the skim milk powder that is marketed for commercial use, because of FDA law, pretty much has to be exported, correct?

A. Correct.

Q. So turning to page 10, and the last paragraph just before your discussion about the Cooperatives' proposal for pool plant provisions. You don't actually have language to propose today, what you are saying is that if there is going to be a Federal Order in California, if you go down that road, look to the existing Federal Orders for how that language works for calculating the PPD, correct?

A. That is correct.

Q. Okay. And let me see if I can -- in talking now

exemption versus -- or you know, Mr. Beshore focused on two issues, the exemption or depooling -- and you talked about, at a minimum, would it be fair to say that if plants, like they can in existing Federal Orders, can voluntary pool or not pool, then you wouldn't need an exemption, correct?

A. That is correct.

Q. So it is -- would it be the case that when you keep saying a minimum, that your preference would be to have the rule as it exists in existing Federal Orders, and not voluntarily pooled, correct?

A. That is correct.

Q. Turning to page 12 and your discussion of, underneath the Dairy Institute proposal for Class III and IV prices, when you discuss the observing your, you have observed milk movements in and out of Orders 5, 6 and 7, correct?

A. Yes.

Q. Okay. And those are, in your view -- and I would agree with you -- inefficient movements of milk, correct?

A. Yes.

Q. Have you, do you have information for this record, have you observed currently in 2014 or 2015, those kinds of inefficient movements with respect to California?

A. I have not. Doesn't mean they don't exist, but I have not observed them.

Q. And on the bottom of page 12, and I think that

Ms. Vulin was trying to get at this, but maybe let me see if I can get at this a different way. With respect to the Cooperatives' proposal and the inclusive or mandatory pooling issue, when you reference a criticism of the Dairy Institute proposal as being based not on market need, market value, or market efficiency, would you agree with me that that is similarly a problem as to the Cooperatives' proposal with respect to pooling?

A. It does have that potential if excess milk has problems finding a processing home.

Q. And, finally, looking at page 13, looking at your discussion about the price formula issue. Your criticism of the Dairy Institute proposal would be cured if this was done on a national basis; is that correct? If pricing were done on a national basis, a national hearing?

A. If we had a national hearing, yes, to address all Federal Orders. You know, the concept of regional pricing for manufacturing milk is starting to surface in the industry, and it seems as if what I'm anticipating the institute will put into their proposal is that we kick that off with a special price formula for California, which would inevitably, in my opinion, go elsewhere. And so my, NAJ's position would be let's do them all at once instead of doing them piecemeal.

Q. You understand that unfortunately the nature of this beast is, that it's not national hearing, it is a California

hearing, so it may have prevented Dairy Institute from doing that, correct?

A. I do.

Q. And so in a way, what you are saying is, you know, if we're going to do these things, everybody should be up-to-date, correct?

A. Yes.

Q. That's all I have.

CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne for Hilmar Cheese Company.

I'm looking, Mr. Metzger, on your, on page 3 of your statement where you share with us the Van Slyke formula.

A. Yes.

Q. And near the top of the page, just before the heading Whey Production, the sentence reads, "The Van Slyke formula cheese yield formula, predicts that average component milk in the CDFA pool will yield 10.14 pounds of cheddar cheese."

Do you see that?

A. Yes.

Q. Okay. Would you agree with me that the Van Slyke formula is a formula that predicts cheese yield in a controlled laboratory setting? That is, it does not include losses, shrinkage, incurred by most cheese plants?

A. Correct, it's a theoretical yield.

Q. And on the bottom of page 4, the second to the last line from the bottom of the text when you are talking about additional yield of .84 pounds of SMP, skim milk powder, you are also dealing with a theoretical yield that doesn't include losses, shrinkage, incurred by manufacturing plants, correct?

A. Yes. Table 7 is, shall we say, proof of concept. You know, obviously it would be possible to include, you know, the different moisture contents, shrinkage, losses, etcetera, but I felt perhaps we were getting complex enough already. The bottom line was, they were all, the thrust of this was a proof of concept that higher component milk will lead to yield of higher yield of skim milk powder.

Q. Okay. So your testimony shows direction, not result, in an actual manufacturing plant?

A. Correct.

Q. In your testimony on incentive to increase protein production, you are not, no doubt aware that Federal Orders have included protein in at least some Orders, from the late 1980's, early 1990's, correct?

A. Yes.

Q. And have you observed in those markets that the protein content of producer milk has been measurably increased over time?

A. Yes, it has been.

Q. In response to a question, a question from Mr. Beshore,

you indicated that you support the proposal for a Federal Milk Marketing Order in California.

Am I correct that your response in the affirmative was primarily driven by the fact that the proposal includes protein pricing, which is important to your organization?

A. Yes. It sends a better signal for component production than does the existing CDFA Order.

Q. Okay. So your answer was based on the concept of protein pricing, not whether protein pricing came from a Federal sovereign or a state sovereign; is that correct?

A. That would be correct.

Q. And you were also asked a question, the premise for which is, about depooling. The premise for which was producers want to keep the high protein value in their milk checks and not share it with others.

Do you recall that?

A. Yes.

Q. Are you aware that there, in the Federal Order systems, in the system, that extra revenue that might be available from depooling may, on occasion, be retained by plants to offset their losses and not shared fully with the producer-suppliers?

A. Yes.

Q. Okay. And that's, would you agree that that's a function in the Federal Order system that allows a recovery, where for a particular plant, the make allowance may not be

sufficient?

A. Yes, that is a possibility.

Q. Okay. And are you aware that in the Pacific Northwest, plants and producers may depool, and do depool, and have depooled in 2014?

A. I would imagine that is indeed the case. I haven't looked at the specifics for that particular Order.

Q. So with the opportunity to depool in that market, which has not been limited by any Federal Order hearing, to the extent revenue is available there, the political economic drive to change the Federal Order to accommodate regional lower milk values, would not be quite as strong as it would be in California if everybody must be pooled?

Would you agree with that?

A. Yes.

Q. Thank you. That's all I have.

JUDGE CLIFTON: Who else has questions for Mr. Metzger? Mr. Beshore?

REDIRECT EXAMINATION

BY MR. BESHORE:

Q. I'll try to be quick. Just a couple of follow up clarifications.

On Table 11, where you calculate the, assume the PPD, assume Class 1 differential value in a California Order.

A. Yes.

Q. Okay. You used only like two plant locations there. I think $1.80 and $2.10.

A. Correct.

Q. So there are other plants located in other zones in California. You are aware of that?

A. Yes.

Q. Okay. So that the resulting differential might be different if you used different imputed differentials to come up with that calculation?

A. Yes. The weighted average differential could be different if all plants at all locations were included, along with their volumes, and their zone differentials didn't have access to that data. I wasn't really sure how much it might change that.

Q. Right. Well, we don't have that data and so we can only, I mean, you made one stab at it, Mr. Hollon made another stab at it. That's about what we can do with what we have.

A. Right.

Q. Okay. You used Order 30 component ratios, rather than California component ratios, because you don't have, CDFA doesn't provide that data?

A. CDFA does not provide protein data.

Q. Okay. Did you think of using, like, National All-Jersey producers in California as another way to estimate those values, or was that, was that a kind of data

that might be available to you?

A. It would be such a subset of the overall data. For example, I did consider using Dairy Herd Improvement Association data for, you know, herds that opt into that service.

Q. In California?

A. Well, in California -- yes, in California. But that would be a select subset of herds as, you know, not all-inclusive of all herds in California. And so it would only represent maybe half the milk in California, so I opted not to go that route.

Q. So you just took all of the Order 30 milk instead, basically?

A. It's the most detailed analysis that I'm aware of on month-to-month herd component levels. I actually did look at DHI data from California, Minnesota and Wisconsin. And of cows enrolled in Dairy Herd Association testing, the California data actually has a higher protein percent than does Wisconsin or Minnesota.

Q. Okay. How does butterfat compare in Order 30 versus CDFA butterfat data?

A. Did not look at that.

Q. Okay. If CDFA data showed slightly higher butterfat, that would imply, potentially, a slightly higher protein level.

A. Yes.

Q. Okay. And that would, in turn, factor into your 40-step blend calculation in however it would factor?

A. Should we re-work that, sir?

Q. No, I didn't really want to go there.

On the standard deviation information you provided, just for clarity, I'm told by my statistical consultants from my consulting statistician or something, that the percentage of the total that would be represented by the two standard deviation difference, which you have calculated for, is 2.5 percent of the population.

A. There would be 2.5 percent at that level or higher, but also on the lower end of the tail, there would be another 2.5 percent. Two standard deviations less than the mean or below.

Q. But for what you calculated, that would be the 2.5 percent highest solids protein part of the --

A. Yes.

Q. -- data base. Okay. And one final question.

With respect to the question on how your thoughts on a small, less than 150,000 pounds exempt manufacturing plant would work, would that exempt entity, as you conceive it, have a limit on how much, on the volume of milk that it could buy from other entities?

A. Well, the understanding is that the 150,000 pounds wouldn't matter milk source, whether it all came from the own herd, or whether it came from two different neighborhood

suppliers.

Q. Right. That's all hard cap, so-to-speak?

A. Yes.

Q. Thank you very much, Mr. Metzger.

JUDGE CLIFTON: Mr. Zolin?

CROSS-EXAMINATION

BY ZOLIN:

Q. Hello. Alan Zolin, A-L-A-N, Z-O-L-I-N.

Mr. Metzger, you talked a lot about Order 30 data in both cross-examination and in your testimony, but are you familiar with the type of pricing that milk producers are receiving in the Upper Midwest, Minnesota-Wisconsin area?

A. It's Federal Order milk multiple component pricing, plus whatever over order premiums may be available.

Q. And are those over order premiums, would they include protein premiums that are being paid by handlers in that area?

A. Some of them are, yes.

Q. Okay. Can I ask you if you remember, going back in time, when component pricing was put into the Order 30 marketing area?

A. I remember when it was put into Orders in general, not necessarily the Order 30 market. I'm from Northern Indiana, and I'm old enough to remember -- came from a Guernsey herd -- I remember when we received milk protein payment, and I remember when we received a protein premium, and then I

remember when component price, Federal Order component pricing came in.

Q. That's fine. Where I'm heading is that there were protein premiums being paid in Wisconsin before component pricing; is that correct?

A. That's correct.

Q. And do you know what would have happened, or what did happen, to the level of those protein premiums that were being paid after component pricing went in that had a protein price in it?

A. The potential existed for some protein premiums to either be reduced or even eliminated depending on, you know, what the receiving plant was able to extract out of the marketplace for their product.

Q. Thank you, sir. That's all I have.

JUDGE CLIFTON: What else?

RECROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning, Mr. Metzger.

A. Good morning, Ms. Taylor.

Q. Sue Taylor from Leprino Foods. Just one item of clarification and it might be a nit. But on page 12, top, it is four lines down. You note, and this is the sentence starting with "due to their irregular processing schedules, their cost, and therefore, their make allowances are greater

than those of manufacturing plants that can run at full capacity nearly all the time."

I want to clarify, because I think there may be some confusion that gets created by the term "make allowance." And make allowance, of course, is used to describe a factor in the regulated milk price formula.

I want to clarify your use of make allowance in that case, and confirm that it is not to infer that the regulated milk price gets adjusted because of their increased cost. What you are really referring to is the increased cost.

A. Yes, each, you know, each plant does have its own make allowance, regardless of what product they are making, being their cost to produce the product. That was my use of the term make allowance in that particular context, was that plant's particular cost to make product. But yeah, that particular plant would not impact the overall make allowance in the Federal Order formulas, unless they somehow got included in the plant survey that's used for the overall Federal Order formula make allowances.

Q. Okay. Thank you.

RECROSS-EXAMINATION

BY MR. VANDENHEUVEL:

Q. Good afternoon.

A. Good afternoon, Rob.

Q. It is afternoon. Thank you for coming out and

testifying. We appreciate the detailed nature. I had just a couple of --

JUDGE CLIFTON: Mr. Vandenheuvel?

MR. VANDENHEUVEL: I'm sorry, Rob Vandenheuvel, it's been more than a week, so I haven't been up here in awhile.

Rob Vandenheuvel, V-A-N-D-E-N-H-E-U-V-E-L.

BY MR. VANDENHEUVEL:

Q. On the same paragraph that's Ms. Taylor was just asking you about, I had a couple of follow up questions with regard to the idea of balancing, and its interrelations with pooling.

You mentioned in the top of page 12, that some manufacturing plants exist primarily to balance the milk supply during the times of too much milk. Are you aware in California, of how many balancing plants that it would be a true balancing plant we have, or their volumes have substantial movements in periods of either surplus or deficit, or there are truly balancing?

A. I do not.

Q. To, and so following up on that, you wouldn't know if we had any, if there were any balancing, whether that was, whether those plants and those assets were owned by cooperatives or whether they were owned and operated by private companies?

A. Yeah, I don't know which plants would exactly fit your definition of a balancing plant, so it's, therefore, I wouldn't

have --

Q. Well, it is not my -- to be clear, it's not my definition, in the next line, these plants run at full capacity only part of the year. So that's what I'm trying to aim at. Do we know, in California, are there plants that run a full capacity intentionally part of the year, and only partial capacity intentionally other parts of the year?

A. I do not know of that.

Q. Okay. In California, we have, are you aware that approximately 80 percent of our milk is managed through three Cooperatives, DFA, CDI, and Land O'Lakes?

A. Yes.

Q. And those are the three proponents of Proposal Number 1?

A. Yes.

Q. And would it be fair to say that some of their investment in processing capacity or processing assets, could have been aimed at getting more control over this idea of balancing, having their own assets to lean on when they end up having additional milk that needs to be processed?

A. That certainly is a fair possibility. I can't speak to specific plants or specific ownership.

Q. So I guess, you know, what my point would be in asking that would be the very folks that could be operating these balance, these balancing assets, are the same folks that are

putting forth Proposal Number 1 in this hearing. Would you say that's a possibility?

A. That is a possibility.

Q. All right. We have heard testimony earlier in this hearing about those same Cooperatives taking a slightly different approach to trying to balance their supplies, and that is through base plans. Are you aware that base plans have been established by the three co-ops in California?

A. I know they exist, I do not know the specifics.

Q. Would it be fair that the operation of a base plan could be more of a preventive measure to balancing, as opposed to trying to process excess milk and have that be your method, sole method of balancing?

A. Yes.

Q. You have mentioned that National All-Jersey has -- I'm going to shift gears a little bit -- National All-Jersey has a membership of over a thousand milk producers, including a hundred members in California.

Is your membership exclusively producers? You are a producer-based organization?

A. We are primarily a producer-based organization. However, any individuals who want to support our work can join -- can join the organization as well. For example, we have retired producers who opted to continue to support National All-Jersey through membership, we have a few industry

folks who do as well. I would say probably at least 90 percent of our membership is milking cows in some way, shape, or form.

Q. And the policies of National All-Jersey is established by a Board of Directors?

A. Yes.

Q. And the Board is also made up of producers that are members of your organization?

A. Yes.

Q. So I noticed on page 12, and leading into 13, the discussion about a national price grid on manufacturing milk, and we've talked about this a little bit in previous questions about the possibility that that would be a national discussion. I also notice that on page 13 in the second paragraph, so the first paragraph, "the issues of price discovery in make allowances may well need to be updated." Your use of the word "may" there leads me to believe that National All-Jersey doesn't have a specific policy yet with regard to a national price grid, but this is rather some opining on your behalf.

A. It is a, it is a concept that's being discussed, yes.

Q. But there's no official policy at this point by National All-Jersey in favor or in opposition?

A. Correct.

Q. That's all I have.

JUDGE CLIFTON: Thank you, Mr. Vandenheuvel. Who else has questions for Mr. Metzger?

BY MR. RICHMOND:

Q. Bill Richmond, USDA.

Thank you, Mr. Metzger, for your testimony, we appreciate it. Do you have any idea approximately the percentage of the membership of National All-Jersey that may be considered a small business?

A. Give me the official definition of small business.

Q. Approximately 315,000 pounds of production a month, maybe 175'ish cows?

A. I'm going to say 60 to 65 percent.

Q. Is that on a national basis?

A. It is a national basis.

Q. Is that approximately the same percentage in California?

A. No. The California percentage would be lower. The average herd size in California is much larger than the national.

Q. Okay. So perhaps --

A. I'm going to say 30, 35 percent.

Q. Okay. Do you happen to have any idea of the approximate number of Jersey cows in the State of California or approximate production from Jersey cows in California?

A. I have seen industry estimates that the population percentage of Jerseys or Jersey-influenced cattle, given that

crossbreeding is becoming more prevalent, that the Jersey population in California, or Jersey-influenced genetics, would represent perhaps 20 percent of the total.

Q. Approximately 20 percent. Okay. So I, this gets back to Ms. Vulin's line of questioning just about kind of the basic fundamentals of whey -- low protein producer and a high protein producer, what their operation looks like. Is it primarily a function of genetics or can you just help us better understand what, if I'm a producer and say I want to increase the protein content of my milk, what are the basic steps that I should follow?

A. I would say there would be four primary options. One, obviously, would be genetic selection. Regardless of breed, there are genetics available to producers that will increase protein content of milk.

Q. It is just not a Jersey cattle thing, there's other breeds that would also --

A. Correct.

Q. Okay.

A. Correct. Because just through herd culling you can decide to remove from your herd low-producing, protein producing cows. Feed rations can influence, as well as can environment. For example, if someone were to put in a fan misting system or something, those protein levels can be impacted by heat and humidity, so keeping the cows more

comfortable can also have a positive impact on protein production.

Q. So generally that would represent some type of capital expenditure investment to increase protein content?

A. In that last example, certainly.

Q. Would it also apply to perhaps changing a feed ration? Is there any way for the, maybe the feed price to decrease while still experiencing an increase?

A. Probably not.

Q. Okay. That's all we have. I appreciate it.

JUDGE CLIFTON: Does anyone else have questions for this witness before he is allowed to be excused? No one.

You have provided a unique perspective and I appreciate very much the hard work that went into your study and your tables and your testimony, Mr. Metzger.

MR. METZGER: Thank you, your Honor.

JUDGE CLIFTON: I also liked your reference to Ben Yale.

MR. METZGER: We all miss him.

JUDGE CLIFTON: All right. Before we break for lunch, I would like to know if Mr. Covington wants to testify today or a different day?

MR. COVINGTON: Your Honor, I prefer going today, if I could.

JUDGE CLIFTON: All right. Shall we take Mr. Covington when we return from lunch?

MR. ENGLISH: We're happy to do that, your Honor.

JUDGE CLIFTON: All right. Mr. Covington, we'll take your testimony as soon as we get back from lunch. And we normally take about an hour and 15 minutes, so let's do that again today. It's almost 1:00. Please be back and ready to go at 2:15. 2:15.

(Whereupon, the lunch recess was taken.)

---o0o---

TUESDAY, OCTOBER 20, 2015 - - AFTERNOON SESSION

JUDGE CLIFTON: We're back on record at 2:17. And just now we're distributing copies of an exhibit. Please raise your hand if you need Mr. Covington's exhibit and do not yet have it.

Mr. Covington, I don't want you to actually get into your testimony until we have the other copies made, but I would like to swear you in. I'll do that in a seated position, and then after I have done that, I would like you to state and spell your name. And in that process we can see if that microphone is in a good place for your testimony. When you are testifying, since you will want to be able to see what you are reading from while speaking into the microphone, we'll test that. All right. 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?

MR. COVINGTON: Yes, ma'am.

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

MR. COVINGTON: Calvin Covington, C-A-L-V-I-N, C-O-V-I-N-G-T-O-N.

JUDGE CLIFTON: Good. Now that's good and strong volume, so that's great.

We will be marking these, I realize the record copies are not yet with the record keeper, but I believe this will be

Exhibit 83. All right. Thank you, Ms. Elliott. We'll mark this as Exhibit 83.

(Thereafter, Exhibit 83 was marked for identification.)

MR. HILL: Your Honor, this is Brian Hill. I see that there is an address at the top of that. I want to make sure that's not a personal address there before we start.

JUDGE CLIFTON: All right. Good. If that's a business address, we're not violating any privacy interests by making it part of our website of exhibits, but if it is your own private home address, then we will probably redact it.

MR. COVINGTON: Yes, it is.

JUDGE CLIFTON: All right. Thank you, Mr. Hill, for bringing that to our attention. Then when you read that and identify yourself if you are going to read that part, please do not read into the record your street address, just your city and state.

MR. COVINGTON: Thank you.

JUDGE CLIFTON: You're welcome. Now, to redact it, Ms. Elliott, what you will want to do for the copies that will go on the USDA website, you will want to blot out the line that has the street address.

MS. ELLIOTT: Okay.

JUDGE CLIFTON: And it appears not only as part of the top identification, but it is also in the first paragraph.

MS. ELLIOTT: Okay.

JUDGE CLIFTON: And we do that whether or not you mind it being disclosed, simply because we have these rules about personally identifying information, and we're not to disclose that, so we disclose business addresses, but not residences. All right.

Is there anyone else who needs copies of Exhibit 83? It appears everyone who needs one, has it. All right. Then, Mr. Covington, do you want to say anything preliminary to reading into the record the statement you have prepared?

MR. COVINGTON: Your Honor, I guess the first thing, I would like to thank you and USDA personnel and also all the participants of the various proposals for working me in, letting me testify. I sure appreciate that.

JUDGE CLIFTON: Well, you are quite welcome, and we're delighted you came. You came from some distance, as did the people from the Washington, DC, area and that's a lot of us here, but everyone who has travelled here, has done so out of a willingness to contribute, and I appreciate that very much.

MR. COVINGTON: Thank you.

JUDGE CLIFTON: You may proceed.

MR. COVINGTON: My name is Calvin Covington. My address is in Clemmons, North Carolina. I worked full-time in the dairy industry for about 35 years before retiring in 2010 as the CEO of Southeast Milk, Incorporated. My formal education includes

a Bachelor of Science Degree from North Carolina State University, and a Master of Science Degree from Ohio State University. Both degrees are in agriculture. Over the years I have prepared proposals for, and presented testimony, including expert testimony, in several Federal Order hearings. Currently, on a part-time basis, I provide assistance to dairy cooperatives and proprietary plants in the areas of milk pricing, Federal Order regulations, dairy policy, plus speak and write on those subjects.

My testimony is presented on behalf of two southeast based dairy cooperatives; Cobblestone Milk Producers Cooperative, based in Chatham, Virginia; and Southeast Milk Incorporated, based in Belleview, Florida.

Cobblestone markets approximately 550 million pounds of milk annually, primarily to fluid milk processing plants in the Appalachian and Southeast Federal Milk Marketing Orders. Cobblestone's 19 members are located in Georgia, North Carolina, and Virginia. Southeast Milk markets approximately 2.5 billion pounds of milk annually, primarily to fluid milk processing plants in the Florida and Southeast Federal Milk Marketing Orders, including two processing plants and one balancing plant owned by the Cooperative. Southeast Milk's 158 members are located in Florida, Georgia, and South Carolina. Combined, both cooperatives market about one-third of the fluid milk in the ten southeast states.

Let me state from the outset, Cobblestone and Southeast Milk operate in the milk market almost opposite from the California milk market. Class I -- and when I use, your Honor, when I say Class and the number following, I'm referring to a Roman numeral. Class I utilization last year in the Florida Order was 85 percent; Southeast Order 74 percent; and the Appalachian order 68 percent. On the other hand, California Class I utilization is about 13 percent. From 1995 to 2014, the southeast saw its milk production decline from 13.5 to 9.5 billion pounds. And let me add here, if it is okay, your Honor, it's not in the print here, that also during this same period of time from 1995 to 2014, the number of licensed dairy farms in the southeast declined from about 8600 to about 2650, about a 70 percent decline. During this same timeframe, California milk production went from 25 to 42 billion pounds.

Even though the two cooperatives I represent operate in a market significantly different from California, this hearing has the potential to economically impact these two cooperatives and their dairy farmer members, plus the processors and consumers the cooperatives serve. This is the reason Cobbleston and Southeast Milk submit this testimony.

Considering the impact of one Federal Order on another Order is not without prior acknowledgement. The often cited Federal Milk Order Study Committee, December 1962 Report to the

Secretary of Agriculture, commonly referred to as the "Nourse Report" speaks to this need as follows, and I quote:

> ...a recognition that the outlook of the Secretary of Agriculture and his aides should not be parochial but industry-wide and national in its scope. The Secretary is empowered and entrusted to develop a system of fluid milk marketing orders, integrated as to their relations with each other and with all the uses in which milk goes, not merely orderly as internal housekeeping."

End of quotation. And the source of this is Report to the Secretary of Agriculture by the Federal Order Study Committee, December 1992, page 10.

The basis of our Cooperative's concern are the results presented in the Preliminary Regulatory Impact Analysis of Proposals to Establish a California Federal Milk Marketing Order, emphasis of proposal to establish a California Federal Milk Marketing Order, released by the Department in August of this year and presented earlier in this hearing. Our concerns focus on producer milk prices and milk production.

Depending upon the specific proposal, the impact on the blend prices at test for the three orders in the southeast varies. The following three tables show the average minimum and maximum impact on blend prices at test for the three southeast orders for the period 2017 to 2024. Data in all three tables is taken from the Impact Analysis report.

The first table here is the Appalachian - Changes in Blend Price at Test (2017-2024). I have listed in the first

column there, each of the proposals. I'll start with the Cooperatives' proposal. Average impact there is minus 13 cents, the minimum is minus 15, the maximum, minus 9.

The CPHA, which is the producer-handler proposal, the average impact is minus 13 cents, the minimum minus 15, the maximum minus .09.

For the Ponderosa, minus 13 the average, minus 15 the minimum, minus 9 the maximum.

And then the Dairy Institute, minus 4 on the average, minus 27 on the minimum, plus 23 on the maximum.

The source for this and the two tables that will follow, your Honor, are from Tables B2, B18, B34, and B50 from the Preliminary Regulatory Impact Analysis of Proposals to Establish a California Federal Milk Marketing Order.

The next table shows for the Florida Order, Changes in Blend Prices at Test, same period of time, (2017-2014). The Cooperatives' proposal of average, minus 22 cents; the minimum minus 31 cents; the maximum minus 10.

The producer-handler, minus 22, minimum minus 30, maximum minus 10.

The Ponderosa average, minus 21, the minimum minus 29, the maximum minus 10.

The Dairy Institute minus 1 cent, minimum minus 44, maximum positive 41.

Again, the same source I just read for the previous

one.

For the Southeast Order, Changes in Blend Price at Test for that same time period, (2017-2024). The Cooperatives', minus 26 cents, minimum minus 34, maximum minus 13.

The producer-handler, minus 25 for the average, the minimum minus 34, the maximum minus 13.

The Ponderosa, average minus 25, minimum minus 32, the maximum minus 13.

The Dairy Institute, minus 24, the minimum minus 75, the maximum positive 33 cents. Again, the same source.

For all four proposals, the average blend price at test over the eight-year period is projected lower in the three southeast orders. Using the lowest average change in milk price from the four proposals, the average Southeast Milk producer marketing milk in the Florida Order, could expect a drop in annual revenue of about $35,000. For a Cobblestone producer marketing milk in the Southeast Order, the annual revenue decline it is about $70,000.

And, your Honor, let me add, it is not in my written report here, that for producers that in these two cooperatives, especially producers in Florida and South Georgia and producers in Virginia, because of their dairy farm structure, they react very quickly and responsibly to changes in price because they can add cows quickly or they can decrease cows quickly because of their set up. So these kind of changes in price, either

plus or minus, could have a big impact on how many cows they milk, as well as how much milk they produce.

According to the analysis, milk production declines or remains flat under the Cooperative, Producer-Handler, and Ponderosa proposals. While under the Dairy Institute proposal, milk production is projected to remain flat in the Appalachian Order, and to increase slightly in the Florida and Southeast Orders. This in marketing areas that, annually, do not produce the milk volume needed to meet consumer fluid demand.

A major objective of Federal Milk Marketing Orders is to ensure consumers have access to adequate and dependable supplies of high-quality milk from the sources best suited, both technologically and economically, to supply these demands. Meeting this objective is a major challenge in the Southeast. Lower producer prices and less milk make the challenge more difficult.

The U.S. Census Bureau estimates the population of the ten southeast states at 76.5 million in 2014, which is about twice the population of California. Using the recently released 2014 per capita fluid milk consumption number of 159 pounds, results in a total southeast fluid milk consumption of 12.2 billion pounds in 2014. Total southeast milk production during this timeframe was about 9.5 billion pounds. This is a deficit of 2.7 billion pounds. If we consider balancing and standardization requirements, the annual deficit easily grows

to 4.5 billion pounds.

Each year the Central Milk Market Administrator publishes per capita milk production data by state. The Central administrator uses a number, 300 pounds per capita production needed to meet a State's Class I and II plus reserve milk needs. Not a single one of the ten southeast states hits the 300 pound mark.

The additional milk needed to meet the southeast fluid milk deficit must be transported into the area, either as bulk or packaged milk. Producing less milk than needed to meet the consumer fluid milk demand, increases expense of transporting milk into the market. This transportation adds additional expense to the cost of milk which is borne by producers, processors and consumers.

Thanks to previous decisions by the Department and the efforts by many groups, milk production in the southeast has been on a slight upward trend since 2010. It is important to all segments of the dairy industry in the southeast, producers, processors, and consumers, this upper trend in production continue to increase in order to provide the fluid milk needed by the market.

In some summary, we encourage the Secretary to do the following:

1. In formulating a recommendation, take into consideration the potential impact a decision in

one Federal Order has on other orders.

2. If a decision is made that makes it more difficult for the three southeast orders to provide consumers an adequate and dependable supply of high-quality fluid milk, be receptive to considering future proposals to help the Orders meet the objective of supplying consumers with an adequate and dependable supply of fluid milk.

That's my testimony, your Honor.

JUDGE CLIFTON: What, Mr. Covington, do you understand to be the mechanism by which the proposals would have the economic impact in your region that is depicted by the models?

MR. COVINGTON: If, again, if I am following your question correctly, and based upon the information that we had, the preliminary economic analysis showed for each Order, including the three orders that I represent, with producers it showed that the milk price from those years, 2017 to 2024, would change, in most all cases, be a lower price level as I had here in my tables for each of the four proposals.

JUDGE CLIFTON: Who has questions for Mr. Covington? Does anyone want to question Mr. Covington about Exhibit 83 before determining whether you object to its being admitted into evidence? No one. Is there any objection to Exhibit 83 being admitted? There is none. Exhibit 83 is admitted into evidence.

(Thereafter, Exhibit 83 was received into evidence.)

JUDGE CLIFTON: Now, who has questions for Mr. Covington?

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Good afternoon, Mr. Covington.

My name is Nicole Hancock and I represent the California Producer Handlers Association and Ponderosa Dairy. I just want to talk with you a little bit about your understanding of how USDA's Preliminary Regulatory Impact Analysis evaluated the proposals.

You have on here that you, I think you pulled out three different charts that affect the Southeast, Florida and Appalachian. Those are the three areas that you are looking at?

A. Yeah, Florida, the Appalachian, and the Southeast.

Q. Okay. You say it different -- Appalachian.

A. Well, that's sort of where I live, and that's the way we always call it -- Appalachian.

Q. Well, I apologize for --

A. No, that's fine.

Q. Okay. So I want to talk about -- so the numbers that you have in here where you talk about, you have averaged the impact in each one of these areas on page 3 of Exhibit 83.

A. Okay. I didn't average, I just lifted the number off

of those particular tables that showed the average.

Q. And in the first paragraph on page 3 it talks about the average blend price over the eight-year period is projected lower. Did you do any kind of analysis using those numbers?

A. Well, what I did is that I took, like I said, I took the worst case scenario. And for those producers, Southeast Milk, who markets milk primarily in Florida, I took the average year annual volume that a southeast milk producer produces, which is about 16 million pounds a year, and just did the multiplication and rounded it off to 35,000.

For Cobblestone, I took the Southeast Order and took the 26 cents. Their average producer produces about 30, about 28 million pounds of milk a year, and just did the multiplication and rounded of to $70,000.

Q. Okay. Thank you. Then, I just want to clarify, and you weren't here for the testimony when the U.S. presented this data?

A. No, ma'am.

Q. So when the USDA presented the data, they had their Economist, Ms. Steeneck, come on and discuss this data. And what she talked about were the numbers reflected. She helped provide some clarification, and I want to tell you about that and then ask you if that has any impact on what you are talking about.

But under the California Producer Handlers Association

Proposal and Ponderosa Dairy Proposal, those are not stand-alone proposals. Those are supplemental topics is what I would consider them to be, that if a Federal Order is adopted, they would like certain aspects included as well that address their, each of their business models.

And so when the USDA conducted that economic analysis as they explained it, or as I understand they explained it, they didn't determine that the impact, the financial impact was unique to that proposal, but was instead, because it was reliant on, say for example, the Cooperatives' Proposal, it adopted those same numbers or changes or economic impact in other areas. Does that make sense?

A. Yes, ma'am. And again, I just, I put it in my tables the way they had it presented in theirs. But what you say makes sense.

Q. Is that how you understood it when you read it?

A. Yes. But again, I wanted to make sure I didn't, I wanted to use the data the way they presented it.

Q. Okay. So it doesn't, in any way, affect your analysis. You are just pulling out the information --

A. That they had, yes.

Q. Okay. Thank you.

A. Thank you.

JUDGE CLIFTON: Who next would like to question Mr. Covington?

BY MR. VETNE:

Q. John Vetne for Hilmar Cheese Company.

Mr. Covington, we had some, quite a bit of information here from milk producers in California and different ways of responding to milk price signals and alternative uses of land. In the areas that you are familiar with, are there alternative crops in which milk producers do, or make, participate, as revenue streams to compare dollars coming in, one use versus another?

A. Yes, there are and it would vary depending upon the area.

Q. In Florida, for example, what might one look at?

A. In Florida, especially in South Florida, at one time you had some dairy farmers, when the citrus industry was strong, moved from dairy to citrus. Also, you had you had some dairy farmers, if they had a land base, would move to beef cattle production. Then, as you move further up into Florida, you had, going from dairy farming into crop farming, or either going into timber. And then moving on up, Southern Georgia and so forth, get more into crop farming, especially cotton or some small grains. Moving on further up into Virginia would be in tobacco or moving in some other animal industry, for example, like poultry or swine.

Q. And of the producers with which you are familiar, are

there milk producers that do, on their farms, have more than one income producing enterprise?

A. Yes, some of them do.

Q. With respect to the impact on, estimated impact, is it your understanding that the way U.S. Dairy Programs estimated the impact, is that the proposal, if adopted, would result in higher milk prices in California?

A. Yes, sir.

Q. And is it your understanding that as a result of the higher milk prices, California dairy farmers would be stimulated to produce more milk?

A. Yes, sir.

Q. And that as a result of more milk being produced, more cheese and nonfat dry milk and butter would be produced.

A. Yes, sir.

Q. And that in turn, that the availability of more dairy products on the national marketplace would adversely affect the basic formula price used in the Federal Order system; is that correct?

A. Yes, sir.

Q. Okay. And at the bottom of your page 1 of your testimony, you've referred to growth of California milk production, and during the same period, a decline in milk production in the southeast states. Would it be the same dynamic, essentially, that between the two regions that has an

affected decline in southeast production, that's California production has grown and made more products available, prices for the commodities used to set Federal milk prices were affected adversely?

A. Well, the primary reason for declining in milk production in the southeast during that period of time would be profitability. This wasn't, a lot of farms just didn't make enough money profit-wise, so they would exit the business.

Q. So I think you estimated during that period of time farm numbers, the approximately 6,000 farmers who decided not to dairy anymore?

A. A licensed dairy farms, according to the published information, about 6,000 less today or in 2014, than there were in 1995.

Q. And with declining milk production, I guess we cannot assume that if somebody went out of business, their cows just went to somebody else and kept producing; is that correct?

A. That is correct, yes.

Q. The number of dairy cows in the southeast have reduced also, which is reflected in the lower production numbers?

A. I can't recall from memory the actual number, what the dairy cow numbers have during that time period, but they have declined, yes.

Q. Okay. Do you know if during that period of declining production in the southeast, when somebody went out of

business, some of the cows were marketed to buyers in California?

A. It very doubtful because just the distance.

Q. The distance?

A. Again, I don't know, but I would -- I would be doubtful.

Q. Where would be the market for southeast cows?

A. Well, a good chunk of those cows that went out would have went to slaughter. A lot of them went to slaughter. Then you would have had some dairy farmers in the southeast buying the better cows, but a high percent of them, generally when a dispersal herd is held in farms down there, a good percent of them are culled and sent to slaughter and they just sort of sell the better ones.

Q. So cows that are finished with their milking cycle just aren't replaced. That explains the drop in cow numbers.

A. Yes, you have, just, again, with farms going down, and again, some current farms not expanding, and total cow numbers would decline.

Q. Thank you.

JUDGE CLIFTON: Who next would like to question Mr. Covington?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. I just want to, just one follow up question,

Mr. Covington. In response to Mr. Vetne --

JUDGE CLIFTON: Your name?

MR. BESHORE: Marvin Beshore.

BY MR. BESHORE:

Q. In response to Mr. Vetne's questions about assumed increases in California milk production of the proposal, if the Federal Order came into California, did you happen to hear any of the testimony relating to the USDA projections where it was shown that, for instance, in 2014, which are actual numbers, the USDA projections that generate the numbers that give you concern, which I understand completely, that they already, in 2014, they got 2.3 billion pounds more produced in California than actually occurred? Did you pick up any of that testimony?

A. Okay. I didn't hear the testimony, but I did see some of that in the transcript.

Q. Okay. And then for 2015 the baseline projections in the economic model showed a, the numbers are in there, roughly a six percent increase, I think, in milk production in California? I might be off on the percentage, but a substantial increase from 2014 to 2015 in California, whereas we're actually down three to four percent for the year. Do you remember seeing that also?

A. Again, I read that transcript, and I guess, I'm sure, I guess, Mr. Beshore, I would have to probably go back and tell you specifically. But I remember a little bit what you are

talking about, I don't have it in front of me.

Q. So, in any event, if those are the realities of, currently, of milk production in California, that could possibly have some impact on what we foresee going forward with a Federal Order?

A. Yes.

Q. Thank you.

JUDGE CLIFTON: How user-friendly is that website?

MR. COVINGTON: Well, I just went to the transcripts and I just pulled them up and read them.

JUDGE CLIFTON: Sounds good. Thank you. There are a couple of features that are unique in my experience with regard to these rule making hearings. The first is the availability of the audio feed, and the second is having transcripts and exhibits as we go along instead of waiting until weeks after the end, which was the timetable that I was used to. So having you be able to access and have information, and then come with your knowledge about your area, is, I think, a wonderful thing.

MR. COVINGTON: It speeds the process up and hopefully makes it more accurate.

JUDGE CLIFTON: Who else has questions for Mr. Covington?

CROSS-EXAMINATION

BY MS. MAY:

Q. Laurel May, USDA. Thank you so much for testifying today. We really appreciate you coming here and sharing your

thoughts with us.

We have a couple of questions about your testimony. First of all, one of the things that USDA is required to do is to consider the impact of our regulations on small businesses, and you have told us that you represent two Cooperative associations of producers. And so our question would be whether you could tell us what percentage of each of those organizations would be comprised of small businesses as defined by the Small Business Association, which is, we have calculated to be about 315,000 pounds of milk a month.

A. Okay. None of Cobblestone producers would classify as small business.

Q. Okay.

A. Because they are producing, the average producer is producing about 28 billion pounds a year. On Southeast Milk, the average producer is between 16 and 17 million a year, and the 158, again, I'm just giving my best estimate, of the 158, may be three or four of them might qualify.

Q. Okay. That helps us. Thank you so much.

A. Yeah.

Q. And on your charts, the tables, I'm wondering if the labels for the columns "minimum" and "maximum" reflect what's really being shown there. As I recall, these were, the changes were the minimum impact and the maximum impact to the baseline numbers. So I'm thinking that negative 15 cents is more of an

impact than negative 9 cents per hundredweight. Am I reading that right?

A. Okay. I had the same question that you had when I read those tables, because I thought it ought to be reversed.

Q. Good, then maybe you are going to straighten me out here.

A. No, because I felt the same way you did. And so since I took the information right from the tables, I felt I better use the same way that they had it in the tables. They had it in the tables. Because if I were doing it, I would have reversed it, but I didn't.

Q. I would, too.

A. But again, but I, you know, that's the data I had, so I didn't feel like I was, I felt I should change what they had.

Q. I totally agree with your viewpoint and I appreciate you pointing that out to us, so I'll have to find out more about that.

On page 2 you cited the Federal Milk Order Study Committee Report from December of 1962, and then below the quotation you list as the source, the Report to the Secretary of Agriculture dated December 1992.

A. Yes, that's a good catch. I just left out the first part of it. I should have had the Federal Milk Order Study Committee, I should have had the, as a source, I should have had the identical to what I have cited up there. My apologies.

Q. Okay. So it should be 1962, then?

A. Yeah, good catch. I don't know how many times I have read that, and my apologies.

Q. Cliff caught it.

A. I don't know how many times I've read that. That's the reason it is difficult to edit your own.

Q. It is.

A. But I have got the, actually, your Director gave me that book, so I think ya'll been trying to get rid of them, so I have actually got it back there.

Q. All right. Thank you so much.

A. A lot of good information in it.

JUDGE CLIFTON: Mr. Covington, do you want us to make the change to your exhibit to reflect as your citation below the quote, 1962?

MR. COVINGTON: Yes, ma'am, that's what it should be. Again, I even read it right here and didn't catch it.

JUDGE CLIFTON: All right.

MR. COVINGTON: Thank you.

JUDGE CLIFTON: Ms. Elliott is making that change now, and I'm making it on my copy to 1962.

Who else has questions for Mr. Covington? Mr. Covington, I think you are done.

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

JUDGE CLIFTON: Is there anything you would like to add?

MR. COVINGTON: No, ma'am, not at this time. I just appreciate this opportunity for working me in.

JUDGE CLIFTON: Thank you for being here and giving us your testimony.

Then I believe we have come to the point where Dr. Schiek returns to the witness stand.

MR. ENGLISH: This is Chip English.

That's correct, your Honor.

JUDGE CLIFTON: Dr. Schiek, I thank you for waiting to resume your testimony so that we could take the testimony of others. You remain sworn. Would you again state and spell your name?

DR. SCHIEK: My name is William, W-I-L-L-I-A-M, Schiek, S-C-H-I-E-K.

MR. ENGLISH: So again, this is Chip English.

And before -- when Dr. Schiek ended his testimony at 5:00 yesterday, he had just completed page 30 of Exhibit 79. So in a moment, but not quite yet, he's going to start back on page 31 of Exhibit 79. But before he does that, I have one preliminary issue, and then because his testimony on page 30 referenced Table 2 of Exhibit 80, I want to discuss some more of that table, because we didn't have a chance to do that at 5:00 yesterday. So let me start with a preliminary issue that was addressed yesterday to some extent, and I think your Honor, you asked a question, and let me just ask.

CONTINUED DIRECT EXAMINATION

BY MR. ENGLISH:

Q. With respect to the issue of Grade A milk and then term market milk in California, do you have some additional information for the record today, Dr. Schiek?

A. Yes, I do. I think maybe some clarification. This issue has come up, I think it would be good to at least get some additional information on the record. The definitions of market milk and Grade A milk under the California Food and Ag Code, are contained in the California Food and Agricultural Code, Sections 35781 through 35928.

And just to, I guess, clarify my comments from yesterday that I was a little uncertain of, market milk meets Grade A requirements. In other words, the bacteriological counts and chloroform counts and everything of market milk basically meet Grade A requirements. There are some categories of market milk, and the extent to which they are still used, I am not certain, but they have more stringent requirements, lower bacteria counts, lower chloroform counts in some cases. And these are, these additional sort of classes of market milk are certified milk and guaranteed milk. Those are both, under the California, defined under the California Food and Ag Code. And if you look at the the descriptions there, these are, have standards and requirements that go beyond just regular Grade A milk. And I think that's primarily because they were designed

for raw milk consumption.

Q. Anything else you would like to add on the issue of Grade A or market milk?

A. Well, then the general question was, how do we interpret market milk versus Grade A milk? And I think what we can say is, in terms of usage, the way we normally use them, they are equivalent.

Q. Okay. Thank you. So now you referenced on page 30, Table 2 of Exhibit 80. And we discussed very briefly your development of Table 2 as taking Exhibit 61 from CDFA Table X, and adding up the data and creating a table with the annual counts, correct?

A. Correct.

Q. So can you, so as we're looking at this, we start with sort of the interesting situation of 1996 volumes, and this is total bulk milk imports in California -- perhaps for those on the Internet or whatever -- and so you are at a situation where coincidentally or however, the volume in 1996 is a little over a 100,000 pounds more than the 2014, correct?

A. Correct.

Q. But -- but in between, there's been, you know, there was looked like an upward trend until you get to 2004, and then there's been a downward trend from 2004 to 2014, correct?

A. Correct.

Q. So in your 18 years at the Dairy Institute, you have

obviously been here for that same timeframe, what would you say was going on with respect to that trend and why it's gone in two different directions?

A. Yeah, the main issue with that trend was changing price relationships with contiguous states. And in particular, in the early 2000's there were some lower prices in some of the contiguous states that led to, or at least a lower price than price relationship that has historically been in place, had historically been in place. And there was opportunity to essentially, create some economic advantage for certain players to import milk or to buy, essentially, buy milk from out-of-state and bring it into California. And so we saw those numbers decline.

Dairy Institute basically tried to get a Class I price adjustment over that period where the numbers were really starting to grow, and eventually we were able to get an adjustment. And around that time, prices, the imports started declining again. I think there were also some changes taking place in terms of the market as well in terms of just how different markets were supplied and how different areas in nearby states at the same time, just business decisions that different players were making that also contributed.

Q. So -- thank you. Would you then pick up your testimony on 31 of Exhibit 79, and read at least the first paragraph and then we'll talk about Exhibit 80 again.

A. Okay.

Q. It is 33 for us.

A. So Changing -- the new heading, right?

Q. Yes.

A. Okay.

Changing milk production trends in California are not disorderly marketing.

Milk production in California has had a history of rapid expansion (Figure 3, Table 3). The CDFA Milk Pooling plan was implemented in the state in 1969. For the ensuing four decades, the state's milk production growth rate exceeded that of the rest of the country as shown in Figure 4 and Table 4. The recent slow down in the growth of California's milk output is not a particularly unusual occurrence when looking at other states. Milk production in the U.S. and several selected states is shown in Table 4 as an index, where each state's milk output is expressed in relation to its milk production in 1985 (100=1985). Major milk producing states like Wisconsin, Minnesota, and New York have all experienced declines in milk production at various times since 1985. FMMO regulated minimum prices have changed throughout the period as well, but there does not appear to have been a focus by USDA on increasing Class III or Class IV/III-A regulated prices to deal with declining milk production in these states or in the orders covering these states.

California's average annual milk output growth exceeded 4 percent in the 1980's and 1990's, before slowing in the period from 2000 to 2009, and slowing further since 2010 (see Table 5) as a combination of high cost for feedstuffs that are now declining (shown in Table 6) and the impact of the state's three-year drought took hold. This year, milk production has declined substantially from last year's record high, but unlike the 2009 downturn, USDA data suggests that cow numbers have declined little and the bulk of the decrease in milk output drop is due to lower milk per cow (Table 7).

Q. Actually, as I looked at it, why don't you complete the next paragraph and then we'll talk to that.

A. Still, for the first four decades after pooling was introduced in California, milk production expanded much more rapidly than in the rest of the U.S., denoting milk production returns that were, on balance, sufficient to encourage strong milk production growth. Another key point to remember in examining milk output growth percentage rates, is that a large milk production base means that a small percentage increases in milk -- that means that -- small percentage increases a milk output can be substantial in terms of the extra milk pounds produced. For example, a one percent annual growth rate based on California's 2014 milk output of roughly 42.3 billion pounds, results in 423 million pounds per year of additional milk. While a one percent growth rate in Florida's milk

production of 2.5 billion pounds, results in additional milk of only 25 million pounds. Put another way, Florida would have to grow by 17 percent to produce as much additional milk as California does by growing at a one percent rate.

Q. So now please stop. Let's go to Exhibit 80. And in those previous paragraphs you referred to a number of tables and figures. So let's start with Figure 3 and Table 3.

A. Right.

Q. And Figure 3 is based on the data in Table 3, so why don't you first start with Table 3 and tell us what Table 3 is and where it came from.

A. Okay. So Table 3 shows California milk production, U.S. milk production, and the rest of the U.S., that's the U.S. excluding California. It shows the production in millions of pounds for each of those regional delineations for the years 1969 to 2014.

Also included are the percent changes in each of the years from the prior year, in 1970 through 2014, and the actual production changes in each of those regional delineations for each of the years from the prior year, 1970 to 2014.

And these data were drawn from USDA, sort of final estimates of milk cow numbers and milk per cow that are contained in the publications as they are cited at the bottom of the table

Q. Which is page 8?

A. Which is page 8, yes.

Q. So then how did that translate over to Figure 3, which is page 7?

A. So Figure 3 on page 7 is simply the California milk production data from 1970 through 2014, and it's just an illustration of the sort of steep rise in rapid growth in California milk output during the entire period.

Q. So then you also referenced Figure 4 and Table 4. And again, looks like Figure 4 on page 9 is based on data from Table 4, which is Page 10, correct?

A. Correct.

Q. So could you tell us what Table 4, Page 10, how it's developed and what it shows?

A. Okay. So Table 4 on Page 10 includes some of the same information that was on Table 3, but also includes milk production data for the states of Wisconsin, New York, Florida, and Minnesota, as well as the U.S. as a whole, and California. And it has the same set of data from the same years, from 1969 to 2014. And then what's been done is to take the year 1985 for each of those states and divide every other production number for every other year within that state, by that year's production in 1985. So it creates an index of production, with a base year of 1985. And the reason for doing that is so that, because there's large differences in total milk produced, it would be very difficult to create a graph that would have a

scale that you could really see comparisons in terms of how milk production is changing in one state versus another, so this gets everything onto a common scale so that you can see the changes relative to each other.

Q. And that's a common method of economic analysis to use?

A. It's a common method to show data in this particular way.

Q. So then that data from Table 4 is then depicted on Figure 4, which is Page 9, correct?

A. Correct. And I would note that again, the sources of the data, they are actually the same publications as the sources in Table 3, and they are listed at the bottom of Table 4.

Q. Now, I note that in, say one timeframe from '97-'98 it looks like, California leveled off, and also, is it 2008 to 2009, production went down?

A. Correct.

Q. What was going on in 2008-2009 that caused that drop, in your opinion?

A. Well, that was the, I guess some people have called it the dairy crisis. It is also more broadly known as the financial crisis. The two events sort occurred at the same time, but essentially, during that timeframe, in part because of the financial crisis, global demand was damaged by the financial crisis, and a couple of years of high prices prior to

that, 2007 to 2008, had resulted in large milk production volumes, not just in the U.S., but in other areas. And so there were excess supplies on the market as to excess inventories and less demand, and so milk prices fell, say dairy commodity price values fell, consequently milk prices fell as a result. And that led to lower, because of the negative margins that dairy farmers were experiencing, that led to lower milk output eventually.

Q. But looking at the index comparison, would it be fair to say California's drop was more significant than other states or the national index?

A. Yes, it was.

Q. And yet California recovered after that?

A. It did. And I think the drop in California, that sort of more extreme drop during that timeframe, had to do with the high feed costs, and there were a lot of dairymen who, in 2008, saw feed costs rising, and I think locked in prices thinking that they may continue to go up. And what happened is that milk price was also going up, you know, in 2007-2008 as feed costs were rising, and the thought was maybe lock in feed costs and keep your feed from escalating, and perhaps that would be a more profitable venture because maybe the milk cost would continue to go up. So folks did lock in feed costs. I'm not saying everybody did, but there were numbers who did. And so they kind of got saddled with the higher feed costs as milk

prices then declined, and that had a real dramatic impact on a lot of folks. Even those who didn't lock in feed costs still saw really bad margins. That was just a really bad year for everybody in the industry.

Q. So then you next reference Table 5, which is on Page 11 of Exhibit 80. Were you done talking about Figure 4 or --

A. Well, yeah, just looking at Figure 4 a little bit more, the purple line on the graph, I'm assuming everybody has color graphs. The purple line is the U.S. milk production index. You can see that sort of trends in a more gradual but steady upward direction, but you see other things happening in various states of Wisconsin from 1985, actually down to about the early 2000's, experienced a downward trend. And somewhere around 2004, that trend reversed and they started experiencing production increases.

New York kind of was steady, not seeing much growth at all throughout much of the period from '85 to the late '90's, but after the late '90's, maybe began to see sort of an upward trend.

Florida, during the early part of the time period was growing. And then from, say around 1994 to maybe down to around 2008, saw its trend move downward in terms of milk production, but then it's turned around since that time and resumed an upward trend.

And Minnesota declined, and to this date, still hasn't

got back to the production that they had in 1985.

Q. So what conclusion did you draw from that relative to this proceeding?

A. Well, in a lot of the major dairy states, and I'm not counting Florida as a major dairy state, but they just happen to be representative, maybe, of the Southeast, you know, there have been periods where production is declined, and in some cases, has gone on a downward trend for a number of years. And so California is, having had a long history where it really didn't experience downward trends and growth, has had its upward trend modified, and you know, this year, again, milk production is down. We don't know whether that's the beginning of a new trend or whether that's one of a couple of declines we have had in the last eight or nine years, where afterwards, the industry recovers and grows again.

Q. Anything else you want to say about Figure 4 at this point?

A. No.

Q. So turning to Page 11, Table 5, how is this produced and what does this show?

A. So this comes from the data in Table 3. So you see that each of the areas, California, U.S., and rest of the U.S., the production is listed, but also there's the percent change on the prior year listed next to each of those in the 3rd, 5th, and 7th columns. So it's basically taking an average of the

decade, so we have '70 to '79, it is an average of those annual numbers from '70 to '79, and that becomes the sort of ten-year average, average per year change. It is not a compound average growth rate, it's a simple average of the annual changes.

Q. And what do you think this shows?

A. Well, in the decades of the 1970's, 1980's, 1990's and the first decade of the 2000's, California milk production grew at a faster rate than the U.S. milk production as a whole. And as the U.S., except California, which would be all the other states in the U.S., and in a period since that time, California, at least through, from 2010 to 2014 California milk production still grew, but it was at a smaller rate than the U.S., or the rest of the U.S.

Q. Anything else you want to say about Table 5 at this point?

A. No.

Q. So you also discussed in the same paragraph, Table 6, which is on page 12.

A. Uh-huh.

Q. So what does Table 6 show, and well, how was it developed?

A. Okay. So what I tried to do here, these are not monthly average prices for the most part. What I did was to try to track the prices by looking at the first week of the month, the first weekly report from AMS, California Grain and

Feed report. And occasionally there would be no reported sales that month, so with alfalfa in particular, I would looked to try to find the first reported price that was nearest the first of the month.

Basically, the idea is to just to kind of see how those prices have moved and changed over the period August 2012 to June 2015. This was actually a table I prepared for another proceeding, but, you know, since it has data from 2015 as well as the recent couple of years, I felt that it was relevant to basically show what's been going on with feed prices. And certainly, if you look back through that table, you will see very high corn prices in 2012. You remember there was a drought that year in the Midwest, great midwestern drought, and corn prices spiked very high. And so you can see that impact of corn prices in the Northern San Joaquin Valley, for example, at over $300 a ton. Alfalfa was still pretty expensive. I look at supreme and premium alfalfa. If there was a supreme number there, I would get it. If it was, if there was not a supreme number in the first couple of months, I would report the premium number.

So it's not a real pure table in that regard as far as alfalfa prices. But again, the idea was to try to track just a picture of movement in those numbers. And you can see that, well, corn prices have fallen substantially from where they were in 2012. Alfalfa prices, you know, not as much.

Especially for the top quality grades of alfalfa.

I have noticed, in looking at this publication, there's been less supreme alfalfa reported this year. It's been more scarce to find reports of sales of supreme alfalfa. And I don't know what to conclude about that, whether it means that there's less supreme alfalfa, which is the highest quality alfalfa for feeding a dairy cow, there may be less of that available this year, I don't really know. But prices have ranged through this period between $240 a ton into $350 a ton. So those prices haven't, they started in the 250 range, they have ended closer to the same range, but at times have been much more expensive.

And then Canola meal is included, because as I look at the feedstuffs sheet that's developed by the CDFA Cost of Production Unit, that Canola is a feed, that's becoming more used more often in California. It is still not, there's not one dominant feed ration in California. California dairymen are great at kind of figuring out different ways to construct feed rations and so they look at prices and will rebalance their feed rations. But Canola is something that's been used more and more. And at times that's been very expensive, over $400 a ton. Currently, the most recent data I have, is that the numbers are down somewhat for Canola as well from where they have been at times. So that's just a picture of what's happening with feed prices.

Q. And again, if it was blank, that means you just couldn't find anything?

A. Yeah, there wasn't any data at that particular point in time.

Q. So what do you conclude from Table 6?

A. Well, that some feed, costs of feed have come down from their very high levels a few years ago, and some are still reasonably expensive.

Q. And let's turn, I think in this particular section you had one more table, Page 13, Table 7.

A. Right.

Q. So let's look at this. And first, tell me what it is and then we'll talk about its implications for a moment.

A. Okay. So this just looks at the period from 1996 through 2014 in terms of annual data, and then we look at the January through August data for 2014 and 2015, and it shows the California milk production during that period, we also have USDA's number from, for the number of cows in California, dairy cows, and the annual average of milk per cow, or the production per cow that it's sometimes called, in the state as well, and the percent changes from prior year for each of those three variables.

Q. So there's been, you have been here, again, since the beginning of the hearing, and you have certainly heard a lot of testimony from a number of witnesses with respect to 2015, and

you have heard about milk cows being sold, and leaving the state, or whatever. When you compare January to August 2014, to January through August of 2015, what do the numbers actually tell you?

A. Well, these numbers suggest that most of the production decrease this year in 2015 has been due to reduction in milk per cow, the output per cow. There has been a modest reduction of .1 percent in cow numbers from the prior year, but most of the 3.1 percent average, January through August average, drop in milk production has been due to a drop in milk per cow.

Q. What do you conclude from that?

A. Well, it's difficult to know for sure what's going on there because the numbers are simply just the numbers, so you have got to have some insight into what's going on in farming. In talking to some consultants, and this sort of is borne out by some of the things that you see in the California dairy feed, it does seem like the quality of feed that's being fed this year is somewhat lower. I have heard that, that's been, similar statements have been made in Dairy Market News, and this year looking at the California Fluid Milk Report, or the Western Fluid Milk Report, and they have a few sentences on California in there every week. There has been some talk about feed quality, particularly hay quality, and that's probably an element in that they have something to do with the drought. But the reality is, I don't know exactly what's driving the

milk per cow number. Normally, when there are really, a real reduction in dairy farm margins for extended period of time, we see cow numbers go down or contract as a result. And I haven't seen that this year.

If you look back into 2009-2010, you can see the reduction in cow numbers at that time. And in 2013, in response to the really high feed costs we had beginning in the second half of 2012, you also saw a modest reduction in the number of dairy cows, but since that time, you know, we have seen some this year, but it is pretty modest.

Q. All right. So returning now briefly to Exhibit 79, would you read the next section, it is two paragraphs, and return to Exhibit 80.

A. Okay.

Q. Dairy farm consolidation.

A. Okay. Thank you.

Dairy farm consolidation in California is not evidence of disorderly marketing.

Despite the existence of an upward trend in milk output, the number of dairy farms in the state has declined in recent years, as it has in most states. The rate of decline in the number of dairy farms appears to have increased since 2006. (Figure 5), as California dairy farmers, with their relatively large reliance on purchased feed, were challenged by higher corn, hay, and oil seed costs. They have also endured a severe

milk price decline in the wake of the global financial crisis in 2009, and the resulting reduction in dairy product demand, which were events that impacted dairy farmers throughout the U.S. More recently, the severe drought impacting California and other parts of the West has increased competition for land and water resources, and that development has created additional challenges for dairy farmers.

The more rapid consolidation of producers is not necessarily a sign of disorderly marketing or a problem that must have a regulatory remedy. Indeed, if preventing farmers from exiting the industry -- preventing dairy farmers from exiting the industry were a goal of FMMO's or of California's state dairy program, we would have to consider both of them to be abject failures. Rather, consolidation of dairy farms is a natural outgrowth of differences in individual producers cost structure, risk tolerance, access to capital, and life goals. As I just indicated, many milk producing states have experienced farm consolidation, that is a declining number of dairy farms. In fact, in recent years, dairy farm consolidation elsewhere in the U.S. has occurred at a more rapid rate than in California. (Figure 6 and Table 8).

Q. So as you finish that section, let's now discuss, go back to Exhibit 80. You referenced in the first paragraph of that section, Figure 5, so why don't you tell us what Figure 5 in, I guess at the same time you might as well tell us about

Table 8.

A. Okay. So Figure 5 is simply a graph with two scales. On the left hand Y axis, or vertical access, is milk production listed in millions of pounds, and on the right vertical access is the number of dairies in California.

And that data, both in terms of milk production and the number of cows, number of dairies, comes from USDA's Milk Production Report. And I have February 2015, that's when the annual production numbers come out in the USDA Milk Production Report, and so it's that one, February 2015, and earlier issues to capture all the data that's in this table.

So the Figure 5 illustration here shows that number of dairy farms in California declining from 2,324 in 1996, to 2,043 in 2005, and then to 1,470 in 2014. But at the same time, milk production reached an all-time high in 2014.

Q. And Figure 6 is also based on Table 8. You discuss that in the next paragraph, so why don't you tell us about Figure 6?

A. Okay. So Figure 6, again, what I did, I'll probably have to look at Table 8 first. And you will see from 2003 to 2014 I have listed the number of licensed dairy herds for California, Idaho, Wisconsin, and the U.S. as a whole. And then similar to what I did a couple of tables earlier, because there is big differences in those numbers, I expressed it as an index with 2003 being the 100 value on the index. In other

words, each of those columns, each number in the column is divided by the production, or the number of herds in 2003, and multiplied by 100 to come up with an index of 100 base. And so that data, the index data is what is plotted on Figure 6.

One more point about Table 8. Why 2003? Why didn't I could include a longer timeframe? USDA began reporting a different series in terms of what we would call farm numbers, beginning with data in 2003. Prior to that time, there were, I believe it was either farms with milk cows or operations with milk cows, and I'm not quite sure what the technical term was, but they basically defined a farm as anyplace having one or more milk cows. Beginning in 2003 they started reporting licensed dairy herds, which is a bit of a different nomenclature, and a different method of determining number. So if you were to include prior numbers published by USDA that reflected the number of farms, they wouldn't be consistent with the data since 2003. So that's why this data begins with 2003.

Q. Indeed about 45 minutes ago we heard Cal Covington talking about the number of licensed dairy herds, correct?

A. We did. So going back to Figure 6, we have expressed each of the dairy farm numbers in each of the four regions, Wisconsin, California, U.S., and Idaho, as a percentage basically of its 2003 level. And basically, if we look down in 2014, the number of dairy herds in California was at 72.1 percent of its 2003 level; the Idaho number was 68.4 percent;

the U.S. as a whole was 64.4 percent; and Wisconsin was 62.7 percent. So that -- that's, I mean, the data is what the data is, and I think it basically says it is a percentage of the number of herds that were there in 2003, consolidation has occurred more rapidly in these other regions than in California.

Q. All right. So why don't you continue with your statement on Exhibit 78?

A. Okay. New heading. Milk supplies are more than adequate for Class 1 use.

One thing that is clear, is that despite consolidation at the farm level and a much slower growth trend in the state's milk output, milk supplies in California are adequate for Class 1 use. Beverage milk sales, a proxy for Class 1 use, are shown in comparison to total milk production in the state for the period 1969 through 2014, in Figure 7. While beverage milk sales do not constitute the entirety of Class 1 use, the change in sales relative to production is useful for illustrating the trend. It should be noted that there are differences in how CDFA and USDA calculate California Class 1 and FMMO Class I utilization respectively. The differences are, and insert likely small, relative to the total number of pounds in the highest class use under each system -- sorry, on the highest class under each system.

JUDGE CLIFTON: And, Ms. Elliott, I would like you to make

the change on the record copies. On page 33, we're merely inserting the word likely.

MS. ELLIOTT: Okay.

DR. SCHIEK: California pool Class 1 usage excludes the exempt quota held by Type 70 producer-handlers in the state that would ordinarily be regulated under an FMMO. The state's pool Class 1 use also excludes bulk milk imports from out-of-state dairy farms that are used to make fluid products, which would also be regulated under an FMMO. Finally, there are minor differences in Class 1 product definitions. Buttermilk is Class 2 in California, while it is Class I under FMMO's. Half and half is Class 1 in California, but Class II in FMMO's. However, almost 90 percent of what would be Class Roman numeral I milk under a California FMMO, is used in whole, reduced fat, lowfat, and nonfat milk, and, therefore, the general trends are not substantially impacted by the differences in CDFA and FMMO data.

Milk production in California and then, delete two words, because there's a double in California there, so delete the second in California.

JUDGE CLIFTON: Thank you, Ms. Elliott.

DR. SCHIEK: The milk production in California has grown rapidly since the inception of pooling, and that should say and.

JUDGE CLIFTON: All right. Do you see that, Ms. Elliott,

we're changing the as to and?

MS. ELLIOTT: Okay.

DR. SCHIEK: Okay. Start the sentence again.

Milk production in California has grown rapidly since the inception of pooling and is now more than five times the Class 1 use in the state, with a reserve supply now more than four times as large as the usage for fluid purposes. Today, most of the milk in California is Grade A, with only 1.1 percent of milk in the January through August of 2015, in January through August of 2015, designated as Grade B.

Milk movements in California are largely efficient.

The quantity of California milk moved into the state's fluid deficit areas is detailed in Table 9. This data is published twice per year by CDFA as part of its milk hauling survey. The reported hauling data largely illustrate milk movements that are efficient, with close-in milk, if available, serving the bulk of the needs. The vast majority of Bay Area milk comes from Northern San Joaquin, North Bay, and Solano areas. Most of the milk moving into Southern California is from Southern California or the South Valley. Milk moving longer distances does happen, but these are mostly organic milk or some type of concentrated bulk product, and volumes are generally small compared to the total milk moving to the Class 1 uses in the market.

MR. ENGLISH: Let me stop you there.

DR. SCHIEK: Yeah.

JUDGE CLIFTON: Let's see -- it's -- let's come back ready to go at 4:00. That gives you a little bit more than 15 minutes. Come back at 4:00.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 4:01. When we finished last night at a little bit after 5:00, Dr. Schiek had completed page 30, and today he completed almost page 34. And we're going to ask him to resume again at a later time because we're interrupting his testimony to take another witness.

Mr. English, would you explain to us?

MR. ENGLISH: Yes, during the break, the train went off the tracks.

What we have here is, I said earlier this morning we were going to have four witnesses with respect to what we call the extended shelf life issue. And to set the stage, Exhibit 1, page 47226, Section 1051.43, General Classification Rules, the testimony we're about to hear, out of order, has to do with shrinkage. And for scheduling issues, and I thank Dr. Schiek obviously, I talked to Mr. Beshore, and your Honor, and the court reporter, and others, for scheduling purposes I would like to call, out of order, Mr. Carl Herbein, H-E-R-B-E-I-N, to the stand.

And I have already provided three copies to USDA, and one to the court reporter, and one to the judge. So

Ms. Elliott already has three.

JUDGE CLIFTON: Mr. Herbein, if you will be seated, I'll be swearing you in in a seated position after we have gotten these exhibit copies distributed.

MR. ENGLISH: And I'll explain what it is after it's been distributed.

JUDGE CLIFTON: And Ms. Elliott, I believe I will be marking this, and you will be marking this, as Exhibit 84; is that correct?

MS. ELLIOTT: That's correct.

(Thereafter, Exhibit 84 was marked for identification.)

JUDGE CLIFTON: This will be Exhibit 84. If anyone wants to be sure you have a copy, we can have you make that on the copy machine at the end. Do you still have -- you need three more? Good.

MR. ENGLISH: I'm sorry, your Honor, I was watching the passing out, what do we mark this as? Exhibit?

JUDGE CLIFTON: 84. 84.

MR. ENGLISH: So Exhibit 84 exists of actually three pieces. Part 1, a two-page statement expert report, and it looks like the Gremlins have migrated over the weekend, because Mr. Herbein's name is misspelled in the very first line. So insert a "B", if possible, on the first line of expert report of Carl D. Herbein, CPA. And that's a two-page statement of

Mr. Herbein. Followed by Part 2, which is six pages of his curriculum vitae. And followed by Part 3, which is a one-page numerical report entitled, Shrinkage - Ultra-Pasteurized and Aseptically Processed Fluid Milk at 7(b) Distributing Plants.

JUDGE CLIFTON: Very good.

MR. ENGLISH: Just have to be all one exhibit.

JUDGE CLIFTON: All right. So, Ms. Elliott, would you, on page 1 of Exhibit 84 insert a "B" in the name, and you may have to just strike "Herein" and write "Herbein", H-E-R-B-E-I-N, in order to make that clear. All right.

Mr. Herbein, I'll swear you in. If you would 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. HERBEIN: Yes, I do.

JUDGE CLIFTON: Thank you.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Mr. Herbein, why don't you read the first two paragraphs, sort of your introduction, qualifications, and then stop so we can discuss a little more of your curriculum vitae, please.

MR. HILL: Your Honor, Brian Hill.

Just quickly, would I be correct in assuming that this address that's here is --

MR. ENGLISH: This is a business address.

MR. HILL: Okay. Just want to make sure.

MR. ENGLISH: I'm confident that's a business address, I have been there. I have also been to the other address, but I'm not going to tell you what that one is.

JUDGE CLIFTON: Yes. And thank you. Mr. Herbein, what that's about is, we're happy to include in the record your business address. For privacy reasons, we do not want to include it if it was your residence.

MR. HERBEIN: It is my business address.

BY MR. ENGLISH:

Q. Go ahead.

A. I'm Carl D. Herbein, CPA, President and CEO of Herbein and Company, Inc., and my business address is 2763 Century Boulevard, Reading, PA 19610. I wish to present testimony on behalf of Agropur, Inc., Aurora Organic Dairy, Byrne Dairy, Ultra Dairy, Cumberland Dairy, HP Hood, LLC, Saputo, and Western Quality Foods. I attach my Curriculum Vitae as Exhibit California Dairy Institute-2, which outlines my education and experience in the dairy industry.

QUALIFICATIONS AND BACKGROUND OF CARL D. HERBEIN, CPA

Carl D. Herbein, CPA, is President and CEO of Herbein Company, Inc., a regional CPA firm headquartered in Reading, PA. I founded this firm in 1972 after working for Ernst & Young. Herbein and Company, Inc., is a general

practice CPA firm with a number of specialized practice areas, including the dairy industry. Our practice in dairy includes representing dairy farmers, dairy cooperatives, and dairy food manufacturers and distributors, as their auditors, tax accountants and consultants. I'm personally responsible for this part of our practice and spend more than 50 percent of my time representing dairy clients in rate making cases, valuation assignments, mergers and acquisitions, and as partner responsible for company audits, tax services, and other business-related consulting issues.

Q. So why don't you stop now. And this is not the first time you have appeared at a Federal Milk Order hearing, is it?

A. It is not.

Q. Do you recall how many times you appeared at Federal Milk Order hearings as a witness?

A. I believe three times.

Q. Okay. What was the most recent time?

A. The producer-distributor hearing.

Q. Producer-handler?

A. Producer-handler, yes.

Q. Was it the national hearing?

A. Yes.

Q. Did you also appear at the earlier producer-handler hearing, the regional version?

A. Yes, I think I did.

Q. Okay. And what other hearing did you appear at?
A. I appeared at a Federal Order, at two Federal Order 33 hearings some years ago.
Q. Would those have been in the 2000-era, we call those the pooling hearings?
A. No, they were prior to Federal Order Reform.
Q. Okay.
A. One had to do with payment terms, time period for payments, and the other had to do with, I'm not exactly, I don't remember the third, but there have been three.
Q. And were you qualified as an expert in dairy cost accounting at those proceedings?
A. Yes, I believe so.
Q. Now, other than the Federal proceedings, is there something called the Pennsylvania Milk Marketing Board?
A. Yes, there is.
Q. And does that board have a number of minimum price proceedings involving producer prices, wholesale prices, and retail prices?
A. Yes, they do.
Q. And have you appeared at those proceedings over the last several decades?
A. Yes, I have.
Q. As an expert in dairy cost accounting?
A. Yes.

Q. Okay. Do you, as a part of those proceedings, conduct surveys of plants so as to be able to provide combined data for the record to mask confidentiality?

A. Yes, we, I refer to that as cross-sections. We accumulate price and -- cost data, strike price -- cost data for a series of companies, and we put those companies together on a weighted average basis and present various economic statistics to the Pennsylvania Milk Marketing Board, which are then incorporated into their process of developing into and out of store prices.

Q. And is one of the purposes of doing a cross-section analysis, the ability to provide data that would otherwise be subject to confidentiality restrictions?

A. That's correct.

Q. Your Honor, I would move that Mr. Herbein be recognized as an expert in dairy cost accounting.

JUDGE CLIFTON: Is there anyone who wishes to question Mr. Herbein before determining whether you have any objection to his being qualified as an expert in dairy cost accounting? No one. Is there any objection to Mr. Herbein being accepted as an expert in dairy cost accounting? There are none. Mr. Herbein, I accept you as an expert in dairy cost accounting.

MR. HERBEIN: Thank you.

BY MR. ENGLISH:

Q. So now returning to your statement, which is exhibit California Dairy Institute-1, Exhibit 84, why don't you complete your statement?

A. BACKGROUND AND PURPOSE OF HEARING.

The Agricultural Marketing Service, Dairy Programs, has called a hearing to consider establishing a California Milk Marketing Order. The Dairy Institute of California is party to this hearing and has requested adding additional provisions for shrinkage for ultra-pasteurized or aseptically processed fluid milk at a 7(b) distributing plant or at a 7(a) distributing plant. This testimony is developed to provide historical shrinkage levels in 7(b) plants.

STUDY CONDUCTED

I entered into non-disclosure and engagement letters with the above cross-section of 7(b) plants. I obtained their monthly federal and/or state milk report which reflects shrinkage incurred for each month. The study conducted covered the time period of January 1, 2013, to December 31, 2014. My calculations utilized all pounds received at the cross-section plants, including farm receipts, receipts from sellers of bulk cream, and transfers. Proper cost accounting requires that all milk in a plant be utilized when calculating a shrink factor. I then summarized the reports and calculated a weighted percentage average shrink based on total product pounds, skim pounds, and also a weighted average shrink percentage for

butterfat. This weighted average calculation was performed so that the cross-section members with the most volume carry the most weight in the average calculation. It is my opinion that a weighted average calculation is preferable to a simple average for a proceeding such as this.

CROSS-SECTION

The cross-section of Agropur, Inc., Aurora Organic Dairy, Byrne Dairy, Ultra Dairy, Cumberland Dairy, HP Hood, LLC, Saputo, and Western Quality Foods is representative of 7(b) plants located in California, and also elsewhere in the United States. The cross-section of dealers has increased the pounds of milk received and processed by approximately 10 percent from 2013 to 2014. Thus, this is a portion of the dairy industry which is changing and the related regulation should also be adjusted for this dairy segment.

FINDINGS

My analysis and results are presented on Exhibit California Dairy Institute-3 and shows that shrinkage in 7(b) plants on a total pound basis is 2.73 percent on --

JUDGE CLIFTON: Is that on a total product pounds basis?

MR. HERBEIN: Yes, excuse me. On a total product pound basis is 2.73 percent; on skim, 2.68 percent; and the butterfat shrinkage is 3.35 percent.

The Dairy Institute requests that the California Federal Milk Order should include shrinkage levels for 7(b)

plants and for 7(a) plants that process ultra-pasteurized or aseptically processed fluid milk at the percentages as reflected on Exhibit California Dairy Institute-3. These percentages shall be used in determining the payment requirement for pounds of skim and pounds of butterfat lost by plants.

SUMMARY

Based upon my review, analysis, and calculations, I find that the "allowable shrinkage factors" for 7(b) plants should be updated to reflect the findings presented on Exhibit California Dairy Institute-3.

REPORT QUALIFICATIONS

I understand that this report will be used in connection with this hearing, and may not be used for any other purposes. This report is based on information provided to me as of the date of this report and is subject to change as a result of additional information which may be provided in the future. My opinions included in this report have been stated to a reasonable degree of professional and accounting certainty. I reserve the right to respond to any additional expert reports or additional information provided.

This will confirm that my fee is a product of the time spent by me and my staff on this engagement, and are at, and are applicable billing rates. Our fee is no way based on the outcome of this hearing.

BY MR. ENGLISH:

Q. Could you read that last sentence again?

A. Our fee is in no way based on the outcome of this hearing.

Q. Does that conclude your --

JUDGE CLIFTON: Would you please read the submitted by and tell me what's contained there?

MR. ENGLISH: Go ahead and read the rest of it.

MR. HERBEIN: I'm sorry. Submitted by Carl D. Herbein, and my signature appears as is my name, and the CPA designation, and it's dated October 16th, 2015.

BY MR. ENGLISH:

Q. So let's now turn to the last page of Exhibit 84, which is labeled Exhibit California Dairy Institute-3, and describe what's in your text. Why don't you walk us through what the cross-section numbers are and what it shows?

A. Yes. I'll be glad to.

First of all, the time period covered by my study was January 1st of 2013 to December 31st, 2014, a 24-month period. The cross-section of processors involved, as I mentioned earlier, Agropur, Aurora Organic Dairy, Byrne Dairy, Ultra Dairy, Cumberland Dairy, HP Hood, LLC, Saputo, and Western Quality Foods. And the summary of the cross-section --

JUDGE CLIFTON: Would you please read the title, which is above what you've told us so far?

MR. HERBEIN: Shrinkage Ultra-Pasteurized and Aseptically Processed Fluid Milk at 7(b) Distributing Plants.

BY MR. ENGLISH:

Q. So actually, before you give me the numbers, why don't we, for the record, discuss briefly what is ultra-pasteurized and how is that different from aseptically processed fluid milk?

A. Ultra-pasteurized milk, as I understand it as an accountant as opposed to a scientist, as an accountant, is a product that has a shelf life of 45 or 50, sometimes more days than that, requires refrigeration to continue its shelf life. Aseptically packaged products, prior to opening, do not require refrigeration. And the biggest difference that I have seen in this product versus a fresh product, is the temperature at which the product is pasteurized and the conditions in which it is pasteurized.

Q. So now tell us about what the three sets of numbers are and what they mean?

A. The 24-month period, the total pounds received at the cross-section dealers are 10,959,937,353. The shrink pounds on total pounds of pounds received was found to be 299,206,000. And that, as a percentage, is 2.73 percent. And that percentage is arrived at by dividing 299,206,000 by 10,959,937,353. The total skim pounds received are 10,104,823,281. The skim shrink pounds for the cross-section,

270,578,691. And again, the same math that I just described for total pounds received gives you a skim shrink percentage of 2.68 percent.

And lastly, total butterfat pounds received by the cross-section, 855,114,072. Butterfat shrink pounds, 28,627,319. Again, the same math gives us a weighted average butterfat shrink of 3.35 percent.

Q. So --

JUDGE CLIFTON: I'd just like to point out for the benefit of the court reporter, he went very quickly through those numbers, but he recited exactly what he has on the last page of Exhibit 84.

BY MR. ENGLISH:

Q. Now, you understand that there's going to be Chuck Meek, who is an engineer, is going to be testifying, and if this had all worked the way the train wanted it to work, he would be right after you, correct?

A. Yes, I understand that, Mr. English.

Q. And so you are not here to testify about why these numbers may be different or, either from HTST, or why, say, skim shrink is different from butterfat shrink, correct?

A. That's correct. My engagement was to have a representative cross-section of processors from whom I obtained information, so that we could present at this hearing, the historically incurred shrink factors.

Q. Okay. So just a couple of other questions. At the bottom of page 1 of your statement that is Exhibit 84, you have indicated that it is your opinion that a weighted average calculation is preferable to a simple average for a proceeding such as this. On what basis do you reach that conclusion?

A. My many years of experience in putting cross-sections of milk processors together. And just to give a quick example, if we have five processors, and they have shrink levels, and assuming that in that five we have one very large processor and one very small processor, if the very small processor has a very abnormal or a very high or a very low number, they would carry 20 percent of the value in a simple average, whereas in a weighted average, they are carrying percentage, their contribution percentage, could be one or two percent. So you could, you can skew the numbers significantly by using simple average. And the Pennsylvania Milk Marketing Board work that was mentioned earlier, focuses and utilizes weighted average for many years, and it has been, I guess as they say, tested many times.

Q. So one final question. You were not involved in the, or one set of questions I should say. You were not involved in the formulation of the proposal that was actually submitted by the Dairy Institute of California, were you?

A. I was not.

Q. And to the extent that, when did you do this

cross-section study?

A. After the California Institute's proposal was submitted I was contacted by HP Hood and discussed this particular process, this portion of the Institute's proposal, the shrinkage institute, and I was asked if we were available without conflict to do this, and did we have the expertise to gather this information, understand the reports. And I studied the proposal and concluded that we were without conflict and were in a position that we could accept this assignment.

Q. So the cross-section that you created with the results on the last page of Exhibit 84, which you have labeled Exhibit California Dairy Institute-3, was created after the Dairy Institute submitted a proposal that would have the additional shrinkage percentage be basically another three percent?

A. Yes. It was -- it was several months, 60, 75 days after the proposal was submitted that we began working on this project.

Q. And again, even as there's going to be, Chuck Meek is an engineer, to talk about sort of the why's these differences may exist on Exhibit 84, Exhibit California Dairy Institute-3, there's going to be a follow-up witness to talk about what the proposal may modify based upon your actual study, correct?

A. Yes, that is my understanding.

Q. Your Honor, I have no further questions, and I would move the admission of Exhibit 84.

JUDGE CLIFTON: Does anyone wish to question Mr. Herbein before determining whether you object to Exhibit 84 being admitted? There is no one. Is there any objection to Exhibit 84 being admitted? There is none. Exhibit 84 is admitted into evidence.

(Thereafter, Exhibit 84 was received into evidence.)

MR. ENGLISH: And the witness is available for cross-examination.

JUDGE CLIFTON: Who will ask the first questions of Mr. Herbein?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Good afternoon, Carl.

A. Hello, Marvin.

Q. From the other coast, along the other coast, or whatever. Okay.

Can you tell me how many plants were actually involved in this study?

A. Let's see, that --

Q. Maybe we can just go through the entities, then you can --

MR. ENGLISH: No, let's not do that.

MR. BESHORE: Well --

JUDGE CLIFTON: Mr. English, please voice that again.

MR. ENGLISH: Well, I mean, I would be, I obviously want the witness to consider his confidentiality obligations, whether actually a plant is listed by the requisites of 7(b) or not. In other words, if an entity has more than one, it may be a confidential matter, so I just want to make sure -- I mean, I want him to answer the question, Mr. Beshore, but I just want to make sure Mr. Herbein deals with his confidentiality issues, that's all.

I think you are entitled to a total number. I just don't know whether if the Jones Company has two and somebody else has one, I'm not sure if that really -- but I'll let the witness decide. I'm just letting him decide that.

JUDGE CLIFTON: All right. So Mr. Beshore was going to have you go by entity because he thought it might be easier for you to read your total. Are you able to start with the total, Mr. Herbein?

MR. HERBEIN: Without referring to my work papers, I'm not a hundred percent sure. Several of the cross-section members had multiple plants, some did not.

JUDGE CLIFTON: Are your work papers in this room?

MR. HERBEIN: No.

JUDGE CLIFTON: Are they on a computer?

MR. HERBEIN: They are.

JUDGE CLIFTON: Do you have your computer with you?

MR. HERBEIN: I do.

JUDGE CLIFTON: Would you like to access it?

MR. HERBEIN: I can, if that's, if that's acceptable. It would be a simple matter of counting.

JUDGE CLIFTON: Yes. I think it would be helpful. So let's go off record for a few minutes while you retrieve your computer and bring it to the witness stand. And the rest of you may stretch in place.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 4:38.

I have asked the witness to access his own private computer to answer these questions. This, in no way, opens up anything in his computer, or anyone to review to determine what other questions you may want to ask him. So this is different in that manner from a trial. All right.

Mr. Beshore, your question was how many plants?

MR. BESHORE: Yeah, and if I could just telescope maybe. What I'm interested in is the location of the plant, the company of the plant, and the regulatory entity by which it is regulated, if it is. So, for instance, you know, put Suever's back there, Hood, Winchester, Virginia, Order 1. That's what I'm interested in for the plants that were in the study.

JUDGE CLIFTON: Can you provide that?

MR. HERBEIN: The first part of -- the first part of Mr. Beshore's question was the number of plants. And my

summary spreadsheets, there are 19 plants in the study. To identify them by location will require further digging into the individual Federal Order or State Order reports, because the summary simply has the name of the plant, and I don't recall -- of course the example of Winchester in Federal Order 1, I certainly know that, and that is one of the plants. But I'm not sure where all of the others are without going into, deeper into my files where I have the reports themselves.

BY MR. BESHORE:

Q. You are not sure of the physical location or the regulatory stats?

A. I obviously knew that when we did this study, but I don't know that looking at the summary sheet which I just counted the plants.

Q. I would like as much of that information as Mr. Herbein's able to provide.

MR. ENGLISH: May I make a recommendation? This is Chip English. Rather than spending -- I mean, we have got a schedule problem, and that's our problem, I realize that. But rather than spending the next 20 minutes having him go through the files, I suspect he's not going to get off the stand tonight anyway, why don't we get him to do that kind of research tonight and merely answer the question tomorrow morning more efficiently.

And I want to go on the record as apologizing, I think

quite correctly, USDA is what is this testimony about? And unfortunately I had a witness to talk about that, but I had to take him out of order so he hasn't give that information. I promise I'll give that as soon as I can. And I apologize to USDA for changing up the schedule.

JUDGE CLIFTON: No, I mean, we knew this was coming.

MR. ENGLISH: It is the fact that Mr. Herbein had to go before Mr. Zolin, because I think that maybe it is out of context is a problem.

JUDGE CLIFTON: Okay. Trials are always like that. Hearings are always like that. You never can get it, you can never get everything you need to know before you have the next witness. So -- all right.

So, Mr. Beshore, be sure while we're here tonight to alert the question to all the things you want to know so that when he comes back tomorrow he has a chance to respond.

MR. BESHORE: Okay. I'll try.

MR. HERBEIN: May I comment?

JUDGE CLIFTON: You may.

MR. HERBEIN: On the first question, so that we're in sync, there are 19 plants. I will provide the location of the plants, the identity of the owner of the plant, because all of the cross-section companies know they are in the cross-section, and the regulatory body to whom they report; Federal Order 1, Federal Order 33. Is that what you are looking for?

MR. BESHORE: Yes.

MR. HERBEIN: That will be a simple schedule.

MR. BESHORE: Okay. And may I just refine that? The regulatory body being the entity the reports to which you used in the study. As I understand, let me ask that question.

As I understand your statement on page 1, that your study involved obtaining and reviewing and compiling, I assume, the monthly federal and/or state milk reports which reflect shrinkage incurred. So if a plant by chance reported to more than one regulatory body, I'm interested in which report was utilized in the study.

MR. HERBEIN: I have in my files all of the reports that were provided to me and my discussion and analysis, so that, that should be very easy for me to extract this evening.

BY MR. BESHORE:

Q. Okay.

A. I'm happy to do that.

Q. So with that, maybe a couple more general questions not related to any specific other information that we just talked about.

Did any of the plants have, produce non-ultra-pasteurized or aseptically processed products, as well as ultra-pasteurized and aseptically processed products?

A. Many of these companies have production in addition to ESL and aseptic, but these reports were for those activities,

for the extended shelf life activities only. So for example, Byrne Dairy has a fresh milk business and they have an extended shelf life business, they are separate entities and separate reports. So that -- that's how I handled those.

Q. Okay. So would any of the, would any of the physical plants for which you, as you indicated, used the total, you know, total plant accounting, did any of them produce non, within that total plant accounting, produce non-ultra-pasteurized or aseptically processed products?

A. My recollection is that there was nothing significant, I'll look at that this evening.

Q. Okay. Did your study go beyond the compilation assembly of the reports that you were presented, that you requested and were presented with?

A. I'm not sure what going beyond.

Q. Did you audit them in any manner or verify the information in any manner or simply were you engaged to aggregate it and compile it?

A. Well, I told you, my professional responsibility to look carefully at the reports, make sure that we understood the reports. We asked questions of the report preparers to make sure that we understood, you know, what was on line 77, just as an example. And we also inquired, we had, in our original submission there was one cross-section company that didn't have access to one or two months' reports, and we excluded them from

the study because they didn't find the reports, and so we, you know, we did a reasonable assessment.

Q. Okay. So for the 9th you had 24-months of reports for each of the 19 plants?

A. Yes.

Q. Your summary is, summary reports prepared on a butterfat, skim, and total pounds basis, were any of the, any of the reports, the data in the reports on a component basis as opposed to a butterfat, skim basis?

A. Yes. There were, in the cross-section there were a number of different reports so that California reports have the fluid carrier, and so we converted everything to total product pounds skim and butterfat so that we had an apples to apples comparison.

Q. Okay. Subject to the further information tomorrow, I don't have any other questions at this time, your Honor.

Thank you, Mr. Herbein.

A. You're welcome.

JUDGE CLIFTON: We still have some more minutes. It's 4:48. Who else has questions, especially if they might require digging into those reports overnight?

CROSS-EXAMINATION

BY MR. SCHAEFER:

Q. Henry Schaefer. Thank you for coming, Mr. Herbein.

A. My pleasure.

Q. Just a couple of quick, I think, clarification things from my point of view.

You indicated that you used the numbers that were shown as receipts at the plants. Do you know if that was physical receipts only, or was there diverted that there were producer receipts that reported on the plant that were diverted and never received in the plant?

A. I believe the information I utilized was received at the plant, because we were studying shrink at the plant as opposed to shrink from the, that would occur during a diversion.

Q. Okay. And the second question I had as from what Mr. Beshore's question previously indicated to me was that you basically used the plant reports that were submitted to the Market Administrator or the regulatory agency that these plants were abiding by. Did you do any looking at make records or anything like that to see what milk moved through the plant to make sure that everything that was on the front end in the record so to speak, were actually used that way in the plant?

A. We did -- we did no review of the reports other than inquiry if there were any serious audit adjustments that had occurred, because most of these reports, since they were 2013 and '14, had been audited.

Q. Okay. Thank you very much. I appreciate it.

A. You're welcome.

BY MR. RICHMOND:

Q. Bill Richmond, USDA.

Thank you, Mr. Herbein, appreciate it very much.

To the extent that there are differences between ultra-pasteurized and aseptically processed products, did you break out the different shrinkages by the difference, by the different products or did -- were the --

A. I did not.

Q. Okay. And we would really be interested in knowing if there are, in fact, differences. So perhaps tonight, if you have the opportunity or inclination to dig a little bit deeper, we would be interested in seeing those results. It is up to you.

A. I'll check. I think that may be a difficult task with the data that I have.

Q. I understand. That's all we have. Appreciate it very much.

JUDGE CLIFTON: When you talk about ESL, you are talking about extended shelf life?

MR. HERBEIN: Correct.

JUDGE CLIFTON: And your heading says ultra-pasteurized and aseptically processed. Does extra or extended shelf life extend to both of those categories?

MR. HERBEIN: Yes. I think in terms of the cost accounting

work that I did, an extended shelf life product could be either what we conventionally call extended shelf life, the 45, 60-day version which requires refrigeration, or the aseptically packaged, which does not. I studied them together.

JUDGE CLIFTON: Who else has questions? I see none. Mr. Herbein, thank you very much. I'm going to have you stay there for right now while we do a few housekeeping things, because I know that in order for you to leave we have to untape the cord to your laptop, so we'll do that after we have gone off record.

MR. ENGLISH: Well, I wasn't aware -- this is Chip English. I guess I was wondering whether, partly because USDA had the question and partly because I agree it is a little confusing, whether we had time for Mr. Zolin to read into the record a one-page explanation of what we're trying to get at.

JUDGE CLIFTON: That's a good idea. So would you -- all right.

Ms. Vulin, this would be a good time for you to note a housekeeping item.

MS. VULIN: Ashley Vulin. So I have one edit to Exhibit 78, this was the Memorandum on Negative Inference of Failure to Introduce Relevant Evidence. And I believe I've spoken with all the attorneys on this point, but I want to make sure that the correction is made on the record.

JUDGE CLIFTON: All right. Has everyone had a chance to

obtain Exhibit 78? All right. We're ready.

MS. VULIN: On page 1, the second paragraph, on the fifth line there is a citation to a case Paudler V Paudler. Now, the quote that follows from this case is actually from another case that, in fact, itself quoted from Paudler V Paudler, so the entire quote that I included was mistakenly not from that case, but only included excerpts from that case. So I would like to provide a correct citation on the record for this entire quote that's provided.

JUDGE CLIFTON: So the place for this citation, then, would be at the end of the second full paragraph?

MS. VULIN: It would, in fact, be after the See Also, and then the citation to Paudler V Paudler would have to go after the quoted material, and would correctly say, "Quoting Paudler V Paudler."

JUDGE CLIFTON: All right. Why don't you, before we try to write it, why don't you just read it, so that I can see where it goes.

MS. VULIN: Okay. So I'll start at U.S.C. Robertson.

U.S.C. Robertson, 233 F.2d, 517, 519, Fifth Circuit 1956. (See also) and now I'm inserting the new citation.

JUDGE CLIFTON: Now I get it. All right. So I'm going to ask that we use an arrow to the backside of the page to insert this language, or if not to the backside of the page, to the margin, maybe that would be better. All right. So we will

copy and then we will put it on our copies so you may begin to dictate.

MS. VULIN: Welcome-American Fertilizer Company, 169 NLRB 862, 870, (1986) quoting from, and then it will continue, Paudler V Paudler.

JUDGE CLIFTON: Very good. And how do you spell Welcome-American Fertilizer Company?

MS. VULIN: W-E-L-C-O-M-E - American, A-M-E-R-I-C-A-N, Fertilizer, F-E-R-T-I-L-I-Z-E-R, Company, C-O-M-P-A-N-Y.

JUDGE CLIFTON: Very good. Ms. Elliott, do you need anything further on that?

MS. ELLIOTT: The NLRB?

MS. VULIN: Yes, National Labor Relations Board.

MS. BECKER: Lauren Becker, USDA. Ashley, is that 1968 or 1986 for the year?

MS. VULIN: I believe 1968, but considering so far, let me double check.

MS. BECKER: You said 1986.

MS. VULIN: It should be 1968. I apologize for that. And I apologize for the inadvertent citation in the original record, it was not intended and in there.

JUDGE CLIFTON: All right. Ms. Elliott, did you get where the 1986 is eliminated and 1968 goes in?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: -- in parentheses representing the year of

the case.

MS. ELLIOTT: Yes.

JUDGE CLIFTON: All right. Good. Thank you so much.

MS. VULIN: Thank you, your Honor.

JUDGE CLIFTON: All right. Mr. English?

MR. ENGLISH: You know, your Honor, we have gotten so close to 5:00, I'm not sure it matters at this point. I would rather make sure that everything is correct. And I don't want to just put it on. I apologize again, Mr. Richmond. I understand the confusion but we'll fix it in the morning. All right?

JUDGE CLIFTON: That sounds good. So it's your intention then, tomorrow, that we have first, well, let me ask you, Mr. English, do you want to put on any testimony before Mr. Herbein completes his?

MR. ENGLISH: I guess I have to talk to him because it is all about his travel schedule. And I really feel like it would have been better if Mr. Zolin could have gotten on first, and so we're going to try to see what we can do about all of that tonight obviously. We're going to visit about that. The goal remains finishing Mr. Herbein, having Mr. Zolin, whichever order that is, then Chuck Meek, and then Mike Suever, and then we'll get back to Dr. Schiek. And if we have time, we'll get to Mr. Dryer, which is like the schedule this morning.

JUDGE CLIFTON: All right. And I just remind all of us that tomorrow is our last day this week where we are now, and

that we will have to shut down tomorrow evening, break everything down and take it with us, because the following day we're in a different location.

All right. See you all tomorrow. You are welcome to come as early as 8:00 in the morning here. We'll go on record at 9:00. We now go off record at 5:00 p.m.

(Whereupon, the evening recess was taken.)

---o0o---

COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO)

I, MYRA A. PISH, hereby certify:

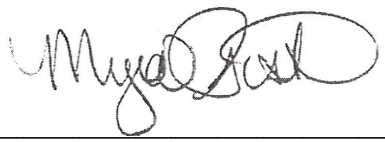
I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 11613, issued by the Court Reporters Board of California and which is in full force and effect.

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: November 19, 2015

FRESNO, CALIFORNIA



MYRA A. PISH, CSR
Certificate No. 11613

B

C

E

F

G

H

U

3

4

5