

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXI

TRANSCRIPT OF PROCEEDINGS

October 22, 2015

Myra A. Pish, CSR No. 11613

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In re:) [AO]
) Docket No. 15-0071
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

Thursday, October 22, 2015
9:00 a.m.

PICCADILLY INN AIRPORT HOTEL
5115 E. McKinley Ave.
Fresno, California 93727

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VOLUME XXI

Reported by:
Myra A. Pish CSR
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APPEARANCES:

U.S. DEPARTMENT OF AGRICULTURE: Office of the General Counsel
BY: BRIAN HILL, ESQ.
LAUREN BECKER, ESQ.
RUPA CHILUKURI, 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.

DEAN FOODS COMPANY: ROB BLAUFUSS

HILMAR CHEESE COMPANY: JOHN VETNE
JAMES DEJONG

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

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

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I N D E X - V O L U M E 21

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1 THURSDAY, OCTOBER 22, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record. This is
3 October 22, 2015, it is a Thursday. We're in Fresno,
4 California, and this is Day 21 of the milk hearing. My name is
5 Jill Clifton. I'm the United States Administrative Law Judge
6 who is assigned to take in evidence at this hearing.

7 We are at a different location today. We, today, are
8 at the Piccadilly Inn at the airport, and I congratulate the
9 Agricultural Marketing Service team in getting all the
10 arrangements made so that we have our excellent sound equipment
11 here, we have the copy machine here, we have all of the things
12 that have made this hearing go so smoothly, even though it all
13 had to be moved. And so I appreciate that very much.

14 I would like to take appearances of those
15 participating, beginning with the USDA employees, I, myself, am
16 one such employee.

17 MR. HILL: Good morning, my name is Brian Hill, I work with
18 the Office of the General Counsel Marketing Regulatory and Food
19 Safety Programs Division.

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

23 MR. RICHMOND: Good morning, William Richmond,
24 R-I-C-H-M-O-N-D, with USDA AMS Dairy Programs. Keep in mind
25 today that this mic is wireless so it will fall if you pull it

1 out of its holder. Good morning. Thanks.

2 MS. MAY: Good morning, Laurel May with USDA AMS Dairy
3 Program, Marketing Specialist, Rule Writer, and actually, the
4 other thing to know about this mic is that it's not attached
5 right here so if you try to move it around it is likely the
6 whole thing will come out. So that's --

7 MS. ELLIOTT: I have nothing else to add. My name is
8 Pamela Elliott, E-L-L-I-O-T-T, I am a Dairy Product Marketing
9 Specialist with the USDA AMS Dairy Program.

10 MS. BECKER: Good morning, Lauren Becker, B-E-C-K-E-R, USDA
11 Office of the General Counsel.

12 MR. CARMAN: I'm not going to touch it. Good morning,
13 Clifford Carman, C-A-R-M-A-N, Assistant to the Deputy
14 Administrator Dairy Programs Agricultural Marketing Service
15 USDA.

16 MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,
17 Agricultural Economist for the Upper Midwest Milk Marketing
18 Order Federal Order 30, and I'm on detail with AMS Dairy
19 Programs.

20 JUDGE CLIFTON: Mr. Schaefer, would you stay there a
21 moment? I want to experiment with the sound a little bit. So
22 you are a representative of the tall person who is high above
23 the microphone. And so was that loud enough for the court
24 reporter to hear? Just barely loud enough for me, so we'll
25 have to -- it was wonderful how Ms. Elliott was loud and clear,

1 usually she has to be on her tippy toes, but not on this mic.
2 But for you tall people, this may be a bit of a challenge so
3 we'll be mindful of that. Thank you.

4 MR. SWENSON: Well, I'm going to duck rather than touch
5 this. My name is Virgil Swenson, V-I-R-G-I-L, S-W-E-N-S-O-N,
6 I'm the Assistant Market Administrator for the Central Federal
7 Order and I'm here on detail with AMS USDA Dairy Program.

8 JUDGE CLIFTON: Mr. Swenson, I didn't ask you yesterday,
9 but would you tell me what area the Central Federal Order
10 includes? It may not be, you know, along state boundaries, but
11 just describe it as best you can.

12 MR. SWENSON: The Central Dairy is, we accompany most of
13 the Illinois, Iowa, Nebraska.

14 JUDGE CLIFTON: Now, you must talk into the mic rather than
15 to me. So my instruction to all of you, do not try to address
16 me, that will not work here. Just speak forward into the mic.

17 MR. SWENSON: The Central Federal Order is pretty much the
18 central part of the United States, it goes through Illinois,
19 Colorado, and most of Iowa, and into Oklahoma.

20 JUDGE CLIFTON: All right. Now we'll take the teams of
21 proponents and opponents.

22 MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N,
23 B-E-S-H-O-R-E, attorney for the Proponents of Proposal 1,
24 California Dairies, Inc., Dairy Farmers of America, Inc., and
25 Land O'Lakes, Inc.

1 MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson,
2 Megan is M-E-G-A-N, with the law firm of Hanson Bridgett in
3 San Francisco, that's H-A-N-S-O-N, B-R-I-D-G-E-T-T, and I'm
4 also co-counsel for the Proponents of Proposal Number 1.

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

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

12 MS. VULIN: Good morning, Ashley Vulin, A-S-H-L-E-Y, V --
13 as in Victor -- U-L-I-N, also co-counsel for the Dairy
14 Institute of California.

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

17 MR. NEWELL: Michael Newell, N-E-W-E-L-L, I'm the Director
18 of Sales with HP Hood.

19 MR. DRYER: Good morning, Greg Dryer, D-R-Y-E-R, I'm with
20 Saputo Cheese USA, Inc., Senior Vice President Industry and
21 Government Relations, and we are a member of Dairy Institute of
22 California.

23 MR. RAMIREZ: Good morning, Miguel Ramirez, R-A-M-I-R-E-Z,
24 Director of Economy, Leprino Food Company, Denver, Colorado.

25 MR. ALBY: Good morning, John Alby, A-L-B-Y, I'm Associate

1 General Counsel for Leprino Foods Company in Denver, Colorado.

2 MR. DeJONG: James DeJong, D-e-J-O-N-G, Dairy Policy
3 Economic Analyst with Hilmar Cheese Company, dairy farmer-owned
4 manufacturer of cheese, whey, and milk powders.

5 MS. KALDOR: Rachel Kaldor, R-A-C-H-E-L, K-A-L-D-O-R,
6 Executive Director of Dairy Institute.

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

9 MR. ZOLIN: Alan Zolin, A-L-A-N, Z-O-L-I-N, Consultant
10 representing the Hilmar Cheese Company.

11 MR. MALBON: Jefferson Malbon, M-A-L-B-O-N, I'm with
12 Yoplait.

13 JUDGE CLIFTON: And Mr. Malbon, where are you normally
14 headquartered?

15 MR. MALBON: I'm headquartered in Ventura, California.

16 MR. SUEVER: Michael Suever, S-U-E-V-E-R, Senior Vice
17 President of HP Hood.

18 MR. BLAUFUSS: Good morning, Rob Blaufuss, B-L-A-U-F-U-S-S,
19 Senior Manager Dairy Risk Management and Economics, The Dean
20 Foods Company.

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

24 MS. HANCOCK: Nicole Hancock, H-A-N-C-O-C-K, with Stole
25 Rives, S-T-O-E-L, R-I-V-E-S, in Boise, Idaho -- that's with an

1 S not a Z -- and I represent California Producer Handlers
2 Association and Ponderosa Dairy.

3 MS. REED: Good morning, Kristine Reed, K-R-I-S-T-I-N-E,
4 R-E-E-D, Miltner law firm, counsel for Select Milk Producers.

5 JUDGE CLIFTON: Has everyone who would like to make us
6 aware that you are here and participating who has not yet done
7 so? Is there anyone who would like now to come to the
8 microphone and identify yourself? All right. I see no one.
9 So we will proceed now with preliminary matters, including any
10 announcements.

11 MS. MAY: Laurel May with USDA.

12 Good morning and welcome. I'm glad everybody found the
13 hotel -- almost everybody. And we are looking forward to
14 another good day of hearing. If anybody would like to testify,
15 please let us know and we'll get you in the line up. If
16 anybody here would like to question any of the witnesses, you
17 may, and you may do so by approaching the podium and the Judge
18 will acknowledge you and give you time to do that.

19 We are continuing to broadcast this hearing via live
20 audio feed, and if anybody is interested in tuning in, they can
21 do so at www.ams.usda.gov/live.

22 The court reporter is recording official transcripts
23 which will be available approximately two weeks after the end
24 of each hearing week, and both the transcript and the exhibits
25 are available at our AMS dairy website.

1 We do have some extra copies of exhibits that have been
2 presented already in this hearing, and they are on that table
3 in the back corner over there. And I believe there are some
4 refreshments out in the hall. Okay.

5 As we mentioned last week, we had anticipated that this
6 hearing would be concluded by no later than November 6th, and
7 you know, it would always be a good thing if it was, but just
8 in case, we've made provisions for extending that. And as we
9 told you, the week of November 9th we have reserved this room
10 again for that week, and if it becomes necessary, we have found
11 another location for the week of November 16th, and that would
12 be at a place called The Falls Event Center, which is at
13 4105 Figarden Drive, that's West Figarden Drive, which is over
14 near Bullard and Brawley, kind of Shaw and 99 area,
15 approximately 11 miles straight West on Bullard from the hotel
16 where we have been staying, so, from the venue where we have
17 been having at Clovis Veterans. So in the event that we need
18 to continue that week, that's where we anticipate that we would
19 be. It is called the Falls Event Center, and it is on West
20 Figarden Drive, Figarden is one word, sounds like "Fig Garden"
21 which is what it was named for, but it's F-I-G-A-R-D-E-N.
22 Everybody good with that? Okay.

23 Yesterday when we concluded, Dr. Schiek was being
24 cross-examined, and we anticipate that we'll be returning to
25 that today. However, there are two dairy producers from Nevada

1 who had planned to be here this morning, and I believe that
2 they are going to be here momentarily. There's another
3 Piccadilly over by the University, so they should be on their
4 way momentarily. I'm not sure what you want to do.

5 JUDGE CLIFTON: Ms. May, do we know whether we can meet in
6 this room on Veteran's Day?

7 MR. RICHMOND: To be determined.

8 JUDGE CLIFTON: To be determined. All right. Our
9 preference is yes, that we would continue to work. So, thank
10 you.

11 MS. MAY: Anything else?

12 JUDGE CLIFTON: No, that's great. I'm just delighted you
13 were able to find space. I know that finding space was very
14 difficult.

15 MS. MAY: Yes. Fresno turns out to be very popular the
16 week of November 16th. Who knew?

17 JUDGE CLIFTON: So for you to have found us space is
18 terrific.

19 MS. MAY: The space is actually a brand new venue, it's
20 about two months old, and so we didn't know about it before.
21 And that's probably, other people don't yet either and that's
22 why we were able to get in there.

23 JUDGE CLIFTON: That's great. I know that everybody would
24 like us to finish as soon as we can get all the evidence in,
25 nobody seemed optimistic that that could be November 6th. That

1 failing, I think we would all like to finish it before the
2 Thanksgiving week so that we do not have to come back. If we
3 do have to come back, it would not be in November, it would be
4 in December. We would all have to go home and then come back,
5 so I hope that does not happen. All right. Good.

6 The docket number of this case is, in brackets, [AO]
7 and then docket number 15-0071, that is the number by which the
8 Hearing Clerk within the United States Department of
9 Agriculture keeps track of filings in this case.

10 All right. Any other preliminary announcements?

11 These look like two dairymen from Nevada. Would you
12 come to the microphone? I would like you to state your name
13 and spell it for us.

14 MR. TURNER: My name Charles Turner.

15 MR. LIGTENBERG: My name is Roger Ligtenberg.

16 JUDGE CLIFTON: And how do you spell Roger?

17 MR. LIGTENBERG: R-O-G-E-R.

18 JUDGE CLIFTON: Into the mic, please.

19 MR. LIGTENBERG: R-O-G-E-R.

20 JUDGE CLIFTON: And your last name, too.

21 MR. LIGTENBERG: L-I-G-T-E-N-B-E-R-G.

22 JUDGE CLIFTON: Say it a little more slowly, I'm writing.

23 MR. LIGTENBERG: L-I-G-T-E-N-B-E-R-G.

24 JUDGE CLIFTON: I have never known that name before,
25 welcome. Now, I -- before now, I think you gentlemen may just

1 have a seat in any of the chairs. You are free to walk out and
2 back in at any time, but you will probably be testifying pretty
3 soon, so if you need a comfort break you should go take it now.
4 There's also coffee outside in the hall and water if you would
5 like either of those.

6 Also, before Mr. English gives his announcement, I note
7 that there is a perfectly good, unused table right in front of
8 the witness stand. And for those of you who are working, I
9 think you should use it instead of sitting on these chairs that
10 have no place to write. It is hard to write in your lap when
11 you are in a proceeding like this. So -- all right.

12 Mr. English?

13 MR. ENGLISH: So part of my preliminary was going to be
14 that we might have dairy farmers. They are not Dairy Institute
15 of California representatives, but we're happy to have them
16 interrupt where our flow is, both because they are dairy
17 farmers, but because they are also around Reno, Nevada, and
18 that's a little far, and they did, when I spoke with them, ask
19 if they could go first this morning so they could get back on
20 the road. And so we're certainly happy to do that.

21 I'm not sure, at one point in time there was some
22 discussion about both of them going on the stand at the same
23 time, maybe just one of them now, I'll let them decide who is
24 going on since I'm not their lawyer.

25 When we're done with that --

1 JUDGE CLIFTON: Mr. English, try not to address me. I know
2 it is hard after all your years of training, but it does
3 interfere with your voice going into the microphone.

4 MR. ENGLISH: And I understand and thank you, your Honor.
5 And I'm sure I probably won't be the only one, and it probably
6 won't be the only time, so, thank you.

7 So after the dairy farmers testify, we will then return
8 Dr. Schiek to the stand, and we hope and expect to complete his
9 cross-examination today, but obviously we're not in control of
10 that.

11 After that, as a preview, and I apologize, but since we
12 ended at 5:01 yesterday, I didn't have a chance to do this. I
13 guess one thought I have is maybe if we end examination a
14 little earlier so that we can do previews. After Dr. Schiek,
15 Mike Suever from HP Hood would return to the stand to discuss
16 orderly marketing issues. And then the long promised now,
17 Greg Dryer would appear. And if we have time, Mike Newell,
18 also HP Hood, would be testifying today on orderly marketing
19 issues.

20 If we get all of that done, we'll figure something out,
21 but I'm not sure we will get that far, but that's a preview of
22 that. Just one other quick preliminary note, and I just put it
23 out there so there's as much advanced warning as possible,
24 there is a long-standing Class Action lawsuit filed here in
25 Fresno, as it happens, and we received yesterday in that case,

1 that's a Class Action filed against a company called
2 DairyAmerica, all one word, DairyAmerica, capital A in the
3 middle, and Judge Ishii, I-S-H-I-I, has issued a notice of a
4 hearing here in Fresno in that proceeding, on Monday,
5 November 16th, at 1:30 p.m. Now, I will note that in the six
6 and a half years this case has been pending, we have yet to
7 have any hearings in the case. And so it may very well be
8 there won't be a hearing. But if there is a hearing, I would
9 need to be there, and obviously we'll think about it as we move
10 forward. And Ms. Vulin, as it happens, will be at a USDA PAKA
11 hearing up in Portland. So I just wanted to give as much
12 warning as possible and obviously, we'll figure it out. And
13 again, so far in the history of this case there has never been
14 a hearing.

15 JUDGE CLIFTON: Well, that is not good news. We don't have
16 to worry about it yet, but that is not good news.

17 MR. ENGLISH: Again, I just want to let everybody know, and
18 we'll obviously do what we can on our side, but I just wanted
19 to let everybody know that that's in the schedule, judges being
20 what they are.

21 JUDGE CLIFTON: Very rarely will an Administrative
22 Proceeding get any recognition from our Federal Judge. Very
23 rarely, but maybe this is the time.

24 All right. Other preliminary issues, announcements,
25 thoughts? All right.

1 I would like the two gentlemen from Nevada to come to
2 the podium together, please, just the same one where you
3 already identified yourselves. Just come to the podium where
4 you can be heard, and I have a question for the two of you.
5 All right. Don't look at me, look at the audience so that your
6 voice will go into the microphone. Do you want to testify
7 right now?

8 MR. TURNER: Yes.

9 JUDGE CLIFTON: And would you like to sit side by side at
10 the witness table which is behind you, sharing the microphone
11 that is there?

12 MR. TURNER: I'll sit up there, but what do you want to do?

13 MR. LIGTENBERG: I want to sit in the back.

14 MR. TURNER: Okay. I'm on my own.

15 JUDGE CLIFTON: No, no, no, the thing about being
16 confronted by the people to whom you are testifying, is that
17 they get to see you as well as hear you, so you need to be at
18 the microphone to my left. You think he means during his --

19 MR. ENGLISH: I think what he means is that Mr. Turner,
20 it's one farm, and I think what he means is Mr. Turner is going
21 to do the testimony rather than what I might have thought late
22 last night that they were both going to get on, and
23 Mr. Ligtenberg is not actually going to appear. It is just
24 going to be Mr. Turner speaking for their dairy. Have I got
25 that right? I got something right.

1 JUDGE CLIFTON: Mr. Ligtenberg, truly you have come all
2 this way and you don't want to voice your opinion about milk
3 marketing? Truly?

4 MR. LIGTENBERG: I have a little problem with talking too
5 much, and my wife says that I should not be a part of this.

6 JUDGE CLIFTON: Well, that changes everything. All right.
7 Then you may take your seats, according to your wishes.

8 Now, let me ask a question about that microphone on the
9 podium. If there is a speaker who prefers to hold it while
10 speaking, that should work, right? So I realize sometimes it
11 is difficult to deal with your papers with one hand holding a
12 mic, but you may find that you like that better than leaning
13 into the mic. All right.

14 I'm going to swear you in, Mr. Turner, in a seated
15 position. Would you raise your right hand, please? Do you
16 solemnly swear or affirm under penalty of perjury that the
17 evidence you will present will be the truth?

18 MR. TURNER: Yes.

19 JUDGE CLIFTON: Thank you. Please, again, state and spell
20 your first and last name.

21 MR. TURNER: Charles Turner, C-H-A-R-L-E-S, T-U-R-N-E-R.

22 JUDGE CLIFTON: All right. Thank you. Now, I see you have
23 no notes. Will you be speaking just from your own memory of
24 what you want to say?

25 MR. TURNER: Yes.

1 JUDGE CLIFTON: All right. You may proceed.

2 MR. TURNER: I don't really have anything prepared, and I
3 assume that I'll have the other people in front of me asking me
4 questions so that will probably be most of the answers that
5 I'll give, but we are a family dairy in Yerington, Nevada,
6 Northern Nevada, and we have been there since the mid-'80's,
7 and I have been at Desert Hills Dairy, I purchased that with my
8 father-in-law in 1999. And since then, we have been shipping
9 milk on an assumed contract into the State of California as a
10 direct shipper to Safeway. And we currently ship milk to both
11 Safeway into California, as well as DFA with their co-op.

12 We have an interest in this because we have been, for
13 my whole dairy career, shipping milk into the State of
14 California, and the Federal Order proceedings have a particular
15 interest to us because I feel, and our family farm feels, that
16 it would be economically damaging to us for the Order to go
17 through and our payout price would not be sustainable in the
18 manner which we're doing right now.

19 JUDGE CLIFTON: Spell for me the name of the town where you
20 are family farm is located?

21 MR. TURNER: Y-E-R-I-N-G-T-O-N.

22 JUDGE CLIFTON: And how long has the family been involved
23 milking cows?

24 MR. TURNER: Our family's been involved for several
25 generations. My father-in-law who is here, he's been in the

1 dairy business his whole life. I have been in the dairy
2 business for most of my adult career. He started in the '60's
3 probably, and I started, like I said, in the late '90's.

4 JUDGE CLIFTON: All right. Is there anything you would
5 like to add before I invite questions?

6 MR. TURNER: Only other than we are proud producers for
7 both, as an independent shipper into the State of California,
8 and also for Dairy Farmers of America.

9 JUDGE CLIFTON: Who would like to be the first to ask
10 questions of Mr. Turner?

11 CROSS-EXAMINATION

12 BY MR. ENGLISH:

13 Q. Chip English on behalf of the Dairy Institute of
14 California.

15 Good morning, Mr. Turner.

16 A. Good morning.

17 Q. So let's be clear, you are not here to testify in favor
18 of the Dairy Institute of California proposal, correct?

19 A. Correct.

20 Q. If -- let's set the stage a little bit and a little
21 clarity for the record.

22 Your dairy was shipping into California as far back
23 certainly as the 1990's, correct?

24 A. Yes.

25 Q. Okay. And sometime in late 1990's there was a change

1 made in the, or at least the California attempted to make a
2 change in the way that milk was accounted for in the California
3 pool as to out-of-state milk, correct?

4 A. Yes, that was early on in my career, so I'm not --

5 Q. All right. You know that that was challenged in court,
6 correct?

7 A. Correct.

8 Q. And after a very lengthy proceeding, the out-of-state
9 producers prevailed, correct?

10 A. Correct.

11 Q. And for clarity, at a different law firm, or firms, I
12 represented the Northern Nevada shippers, correct?

13 A. Yes.

14 Q. Including your father-in-law's dairy at the time,
15 correct?

16 A. Yes.

17 Q. Which was called L&S Dairy, correct?

18 A. Yes.

19 Q. L&S. Today the dairy is called what?

20 A. Desert Hills Dairy.

21 Q. And I do not represent Desert Hills Dairy, correct?

22 A. Correct.

23 Q. Can you tell us the formula for the price that you are
24 paid for your milk when you deliver your milk to California?

25 A. Specifically when I deliver it to the plant --

1 Q. In California.

2 A. -- directly.

3 Q. Yes.

4 A. We get the plant blend price.

5 Q. And if a proposal for a Federal Order is adopted, do
6 you understand that you will no longer, at least at the Federal
7 Order minimum price, get the plant blend price?

8 A. Yes.

9 Q. And do you understand that under the Cooperative
10 proposal you would get something called the non-quota federal
11 blend price?

12 A. Yes.

13 Q. Okay. And do you understand that under the Dairy
14 Institute proposal -- let me backtrack for a moment. Do you
15 understand when a traditional Federal Order blend price would
16 be?

17 A. Yes.

18 Q. Okay. And do you understand that under the Dairy
19 Institute proposal you would get subject to whatever
20 adjustments are made in the pool for transportation credits,
21 etcetera, that you would get a Federal Order blend price?

22 A. Yes.

23 Q. Both of those are very likely except in extraordinary
24 pricing circumstances, would be less than the plant blend that
25 you receive today, correct?

1 A. Correct.

2 Q. You are not here to testify in favor for or against any
3 particular proposal by the co-ops or the Dairy Institute; is
4 that correct?

5 A. I would say no. I would be most in favor of the
6 Ponderosa proposal, as it exempts out-of-state milk being
7 shipped into a California plant.

8 Q. And that's because effectively it would be the least
9 changed, and perhaps no change, to what's happening today,
10 correct?

11 A. Correct.

12 Q. Now, I know some of this goes back in time, but I think
13 you may, at least dealt with it with your father-in-law, what
14 is your understanding of your farm's ability to acquire, in the
15 past or in the present, continue to own and utilize quota in
16 California?

17 A. We were unable to do that as I am aware.

18 Q. So if a proposal is adopted that takes a tradition that
19 sort of pools the money and first subtracts the quota value,
20 and then divides the remainder, do you have a view on the
21 fairness of that concept?

22 A. I would consider that as not a fair outlook for
23 out-of-state milk that's been shipping milk or wants to
24 continue to ship milk into California.

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

1 JUDGE CLIFTON: Who next has questions for Mr. Turner?

2 Mr. Ligtenberg, can you think of any questions that you
3 would like to ask him?

4 MR. LIGTENBERG: If we, you and I, end up with a
5 Federal Order in Northern Nevada, will we be able to survive
6 with the payout that we assume we're going to receive if we
7 have Alternative Number 1, the co-ops? Can we ship into the
8 drying plant in Fallon profitably or is it going to be
9 practice?

10 MR. TURNER: I don't know. That's a tough question. I
11 could say that if we get Federal Order pricing, shipping milk
12 the way we have been for many years to a Safeway plant would be
13 much more damaging than it is now, certainly.

14 MR. LIGTENBERG: Okay. Have you seriously considered an
15 alternative if we end up -- I'm going to answer that. We have
16 discussed selling the cows because I don't think we can survive
17 with the Federal Order in Northern Nevada, California Federal
18 Order in Northern Nevada, because that price in Alternative 1
19 is prohibitive.

20 JUDGE CLIFTON: Comma, do you agree with that?

21 MR. LIGTENBERG: Do you agree with that, since you are the
22 conceiver of this idea?

23 MR. TURNER: Yes, that would definitely be a consideration.
24 If we are not allowed to participate in the quota system or
25 transportation allowances, we're at a big disadvantage.

1 MR. LIGTENBERG: So let's put it this way, will the
2 Alternative 1 be the worse of the scenarios that the State of
3 California going into the Federal Order would create for us in
4 Northern Nevada?

5 MR. TURNER: I can't answer that.

6 MR. LIGTENBERG: Can you answer that the second alternative
7 would be better and that the Ponderosa alternative is the best
8 for us?

9 MR. TURNER: Yes.

10 MR. LIGTENBERG: I'm done. Thank you.

11 JUDGE CLIFTON: You are good.

12 MR. LIGTENBERG: Thank you.

13 JUDGE CLIFTON: You're welcome.

14 Mr. Vetne?

15 CROSS-EXAMINATION

16 BY MR. VETNE:

17 Q. I'm John Vetne, I'm a representative for Hilmar Cheese
18 Company. You were presented with two alternatives, let me
19 present a third and see where you would put that in your order
20 of priorities or preferences.

21 The third would be maintaining the current system of
22 regulation and prices and pooling by the State of California,
23 allowing you to operate as you do now, without a Federal Order.
24 Would that be a preferred alternative?

25 A. That's difficult because I don't really have a

1 preference if California goes, a strong preference if
2 California goes Federal Order or not, the dairy co-ops position
3 goes through or not. I'm more interested in Desert Hills Dairy
4 as an individual dairy shipping in what we have been doing, so
5 I don't have a strong opinion that it's going to -- I'm more
6 looking out for Desert Hills Dairy, our farm.

7 Q. So let me see if I can perhaps infer or paraphrase.
8 Your preference, whatever the outcome, is that you continue to
9 receive a revenue for your sale of milk, which is now a plant
10 blend, in any system that either maintains or succeeds state
11 pricing, correct?

12 A. That's correct.

13 Q. Thank you.

14 JUDGE CLIFTON: Who will next question Mr. Turner?

15 CROSS-EXAMINATION

16 BY MS. HANCOCK:

17 Q. Good morning, Mr. Turner, I'm Nicole Hancock and I
18 represent Ponderosa Dairy, so I'm happy to have somebody
19 champion our cause that's not us. I want to back up a little
20 bit and talk about your operations. How big is your farm?

21 A. We milk approximately 4,000 cows.

22 Q. And you said that you ship to both Safeway and to DFA,
23 both in California?

24 A. Correct.

25 Q. And you understand that DFA is a participant in this

1 hearing as well?

2 A. Yes.

3 Q. Does that present some awkward challenges for you in
4 testifying today?

5 A. Nope.

6 Q. Okay. And when you say you ship to Safeway, this is a
7 Safeway plant that processes your milk?

8 A. Correct.

9 Q. And can you give us an idea of the percentages that you
10 ship of your production to those two plants?

11 A. It is about split in half. We have two facilities and
12 one facility goes to DFA and the other goes to the Safeway.

13 Q. You have two different farms?

14 A. On the same site.

15 Q. So you have different farms, even on the same site that
16 ship to those facilities?

17 A. Correct.

18 Q. How far from those facilities is your farm? How many
19 miles?

20 A. From which facility in particular? The Safeway?

21 Q. From both?

22 A. From both? The Safeway plant is 250 to 300 miles away,
23 and the Fallon plant, actually, the DFA, we have shipped as a
24 co-op, as you know, they can distribute that milk at various
25 different plants they have contracts with. So some of them are

1 50 miles away, some of them could be, well we used to ship it
2 into California as well, too, so they have capability to ship
3 it as far as Idaho or California as well.

4 Q. So the plant in California, how far is that plant from
5 you?

6 A. The DFA plant?

7 Q. The DFA plant in California?

8 A. I don't know which ones that they have. We have
9 shipped them into the Sacramento area or the Bay Area. You
10 would have to ask DFA more precisely where those plants are
11 that we use to ship our milk into, through them.

12 Q. Are you shipping any milk now to any of the California
13 plants?

14 A. Not that I know of, I believe all of it stays in the
15 State of Nevada.

16 Q. So it is just your Safeway plant that delivers to the
17 Safeway plants that are in California?

18 A. Correct, right now.

19 Q. So about half of your milk right now that you produce
20 goes to California?

21 A. Correct.

22 Q. And so would that milk, Mr. English asked you about how
23 you were paid for that milk from Safeway, you are paid on the
24 plant blend price, which is the price, the total price from the
25 Safeway plant; is that right?

1 A. Correct, and we pay all the transportation.

2 Q. So you don't receive any type of transportation costs
3 or allowances today?

4 A. No.

5 Q. And you understand that under the proposals that are,
6 under Proposal 1 and 2, the Dairy Institute and the
7 Cooperatives, that as an out-of-state shipper you won't receive
8 any type of transportation allowances or credits?

9 A. Correct.

10 Q. And you would continue to not be able to participate in
11 the quota program if it continues under either one of those
12 proposals?

13 A. Correct.

14 Q. But the difference is that instead of receiving the
15 plant blend price, you would receive the blend price from the
16 pool after the quota premiums had been paid, and after the
17 transportation credits and allowances had been paid?

18 A. Correct, that's why we feel it is damaging, both of
19 those proposals, to our business.

20 Q. Do you know what the difference is? Have you estimated
21 what the difference would be on a hundredweight basis to your
22 farm?

23 A. It's an estimate, but it would be significant, well
24 over \$1.00 a hundredweight.

25 Q. And the difference in that \$1.00 a hundredweight

1 determined is potentially damaging to your business and its
2 ongoing operations and continued liability?

3 A. Correct.

4 Q. So let's say it is \$1.00 a hundredweight that you would
5 be losing, you understand that that would act as somewhat of a
6 subsidy to the pool as a whole?

7 A. Correct, yes, it would.

8 Q. But you wouldn't be allowed to participate in the
9 benefits of that pool, such as the quota and the transportation
10 credits?

11 A. Correct.

12 Q. And that is based only on you being outside of the
13 State of California as a producer?

14 A. Yes.

15 Q. And if you were the same distance away, let's say we
16 would, hypothetically, redraw the borders of California and
17 capture your farm, if we could redefine the borders of
18 California, that line in and of itself would bring you within
19 the opportunities to participate in the quota and
20 transportation benefits under both of the Proposals 1 and 2; is
21 that right?

22 A. Correct.

23 Q. So really, in essence, the only reason you wouldn't
24 need to participate is just because you are on the other side
25 of the state line?

1 A. Yes.

2 Q. Can you think of, as a farmer, can you think of any
3 reason or any market conditions that would justify, other than
4 you being on the other side of the state line?

5 A. No, especially for the fact that typically or
6 historically in the State of Nevada we're a negative same, so
7 we consume way more dairy products than what we can produce,
8 and we have had very little processing capability, so we have
9 been proud to produce milk that has been coming back into the
10 State of Nevada for consumption. And we're able to do this
11 because of the current system that we're in. Now, if that
12 changes, that would definitely stop our business model and make
13 that not viable anymore.

14 Q. Are there other plants in Nevada that you could deliver
15 to that would allow you to achieve the same financial
16 calculations and payments that you receive today?

17 A. There's a couple of plants, one is the newest DFA
18 plant, but that product is for mainly export use, it is not for
19 consumption locally or domestically typically. And the other
20 is smaller plant in Reno that has significantly dropped off
21 their purchases throughout the years, so that has not become a
22 great outlet for the milk that's produced in the area.

23 Q. Under Ponderosa's proposal, it's a supplement proposal
24 is how I describe it, so it's not a stand-alone proposal for a
25 full Federal Milk Marketing Order, but a proposal that says if

1 there were a California Federal Milk Marketing Order put in
2 place, this is how we would like out-of-state, out-of-state
3 production to be handled. And that be would a continued
4 payment under similar to the plant blend price, but we would
5 calculate that as on a pool blend prior to any quota or
6 transportation credits being removed.

7 Do you understand that if, under Ponderosa's proposal,
8 it would attach to one of the other proposals that have been
9 presented in this case?

10 A. Yes.

11 Q. Okay. And so, for example, if the Cooperatives'
12 proposal were adopted in its entirety without change, but
13 Ponderosa's supplemental proposal were overlaid on top of that,
14 it would allow for the types of payments for out-of-state milk,
15 you would then be in support of the proposal?

16 A. I believe so.

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

18 MS. MAY: Mr. Turner, this is Laurel May with USDA. I
19 don't have any further questions, but we wanted to thank you
20 for coming today and testifying. We really appreciate hearing
21 from producers who are affected by our decisions.

22 MR. TURNER: All right. Thanks for having me.

23 JUDGE CLIFTON: Mr. Turner, do you want to add anything
24 else before you step down?

25 MR. TURNER: No, and neither does Roger.

1 JUDGE CLIFTON: Thank you so much. Let's take a
2 five-minute stretch break while they are greeted and allowed to
3 depart.

4 (Whereupon, a break was taken.)

5 JUDGE CLIFTON: We're back on record. It is 10:05. That
6 was the longest five-minute stretch break ever, but our audio
7 feed was not working properly, but we hope now that it is, and
8 we will continue on. Let's see.

9 I believe we want Dr. Schiek to take the witness chair.
10 Dr. Schiek, don't talk to me, talk to your microphone, and I
11 know you are over there. You remain sworn. I would like you
12 to again state and spell your name

13 DR. SCHIEK: William, W-I-L-L-I-A-M, Schiek, S-C-H-I-E-K.

14 JUDGE CLIFTON: Mr. Beshore, you may proceed.

15 MR. BESHORE: Thank you, your Honor.

16 CONTINUED CROSS-EXAMINATION

17 BY MR. BESHORE:

18 Q. Marvin Beshore.

19 Good morning, Dr. Schiek.

20 A. Good morning, Mr. Beshore.

21 Q. Did you happen to bring the names of the nine Dairy
22 Institute members who didn't ferret out yesterday?

23 A. I did not.

24 Q. Do you intend to?

25 A. I do not have that list with me.

1 Q. Okay. You will be back, though, right?

2 A. I imagine you will see me a few times.

3 Q. Okay. Let's start where we left off with the Table 2
4 of Exhibit 8, the bulk import data. And in addition to
5 Table 2, I would like you to have in front of you, or I would
6 like you to make reference to Figure 2, Figure 2 of Exhibit 80.

7 A. Okay.

8 Q. And also CDFA, Exhibit X or Y.

9 A. Okay. I have the exhibits at the table.

10 JUDGE CLIFTON: I think the easiest thing, Dr. Schiek, if
11 you want to step down and get them, you may.

12 BY MR. BESHORE:

13 Q. And I forget the number of the CDFA Exhibit. While you
14 are getting 61, could you also get 64, which is Mr. Hollon's
15 second set of exhibits -- X and Y.

16 A. I have Exhibit 64 as well.

17 Q. Okay. And 64 we're going to, I'm just drawing some
18 data off of that Table 5.C when you get there.

19 A. 5.C.

20 Q. Just kind of projecting ahead and see if you have all
21 these resources available for a series of inquiries here.

22 A. Okay.

23 Q. So I'm interested in exploring with you the
24 relationship of the bulk imports of milk into California which
25 are summarized on a yearly basis on Table 2 of Exhibit 80, and

1 detailed more completely on a monthly basis, and with respect
2 to sources on CDFA Exhibit X and the same data is on Y.

3 A. Right. Right.

4 Q. So I'm interested in looking at that data with respect
5 to your Figure 2 of Exhibit 80. So Figure 2 of Exhibit 80
6 reflects the relationship as you depicted in your supply of
7 milk in California, and the capacity available to the
8 processor?

9 A. Between production?

10 Q. Production of milk in California. And that's another
11 proxy for in-state supply and demand, correct?

12 A. Yes.

13 Q. Okay. So first of all, there's no, during any period
14 of time, there's no problem with there being a more than ample
15 supply, I think we covered this yesterday --

16 A. Correct.

17 Q. -- in-state for Class I?

18 A. Correct.

19 Q. Okay. And in some periods, the supply in-state has
20 been, in your view, and as depicted on Figure 2, more than
21 ample for the in-state plant capacity demand, correct?

22 A. Correct.

23 Q. Particularly, in, you know, what, '07 and '08 for
24 starters?

25 A. Uh-huh.

1 Q. Right?

2 JUDGE CLIFTON: Was that a yes?

3 DR. SCHIEK: Correct. Yes.

4 BY MR. BESHORE:

5 Q. Okay. So in '07, '08 there was really a glut of milk
6 in California.

7 A. Correct.

8 Q. But the exhibit shows, Table 2, CDFA-X, shows that in
9 2007 and 2008, there were very substantial imports into
10 California, correct?

11 A. Correct.

12 Q. So at what, 70 million or so pounds of milk a month
13 during those years?

14 A. Check the table, just a second. Yeah, 70, 80.

15 Q. So --

16 A. 70, 80. 70, 60 most of that time, the very beginning
17 of that period looks like there were a couple of months where
18 it was 90, excess of 90 million.

19 Q. Okay. So when there's a glut of milk in a marketplace,
20 why would there be substantial imports on an ongoing basis?

21 A. Well, I don't know the particular reasons in this case,
22 but I do know that there are historic relationships, like
23 Mr. Ligtenberg testified to, between Nevada producers and
24 plants in California that goes back to the old Cal-Gold co-op
25 days, where they had producers in Northern Nevada, and as was

1 testified to just prior, a lack of plant capacity there. So
2 they began shipping into the, into Northern California. And I
3 think primarily because Cal-Gold, being in the North Bay area,
4 had relationships with supplying fluid milk into that market,
5 so that's one issue in terms of Northern Nevada.

6 In terms of Southern Nevada, there, as I think I said
7 yesterday, there's a particular entity that owns a plant in
8 California also, it is a farm in Nevada. So it's the structure
9 of that entity.

10 Q. Okay. So basically these --

11 JUDGE CLIFTON: Mr. Beshore, I just need to capture
12 Cal-Gold.

13 DR. SCHIEK: Cal-Gold, I think there might be a hyphen
14 between that.

15 JUDGE CLIFTON: Thank you.

16 BY MR. BESHORE:

17 Q. So these historical relationships, those that we have
18 heard testified to this morning, the relationship that we heard
19 testified to this morning, milk from Nevada going to Safeway
20 plant, Class I plant, correct?

21 A. I believe it does a lot of Class I product, yeah, may
22 do some other things as well.

23 Q. So that's the type of historical relationship that's
24 reflected in these bulk imports of milk?

25 A. It is reflected in part of that, I know. I don't know

1 about all of it.

2 Q. And the milk from Southern Nevada, that relationship
3 that you referred to as also a relationship that ships milk
4 from Nevada to a Class I plant in California, correct?

5 A. Largely Class I, I believe.

6 Q. Okay. Do you know of any historical relationships for
7 supplying manufacturing plants in California from sources
8 out-of-state in any substantial quantities reflected in
9 Exhibit 2?

10 A. I don't know specifically, Mr. Beshore.

11 Q. Do you know any?

12 A. Yeah, I do know, I have heard at various times that one
13 of the suppliers producer groups in Arizona was looking for
14 outlets, essentially looking for customers in California, and I
15 did hear a couple of cheese makers talk about, talking with
16 that entity, and I believe there was some milk being purchased
17 under contract, but I don't, that's, again, a recollection. I
18 don't really have any proof of it or anything.

19 Q. Right. And that's some years ago?

20 A. Yeah, I believe so.

21 Q. Okay. And does Exhibit CDFA-X shows there's not of
22 milk coming into California these days from Arizona, correct?

23 A. Correct.

24 Q. Now, Safeway is a Class I plant, that's located in the
25 Bay Area, right?

1 A. Yes.

2 Q. Okay. They don't have any reason in terms of supply to
3 go to Nevada for milk, correct?

4 A. If I understand your question, there's adequate supply
5 in California --

6 Q. Right.

7 A. -- to meet that need?

8 Q. Yes.

9 A. Yes. That's correct.

10 Q. So why would they go to Nevada to buy that milk? It's
11 a matter of price, isn't it?

12 A. You know, my understanding on how that milk is priced,
13 and, you know, this goes back a long time, is that they
14 essentially pay the same price for that milk that they pay for
15 their California milk. Same price. But they, well, they pay a
16 plant blend for it, okay?

17 Q. And that, well, depending on exactly how that plant
18 blend -- have you ever seen those paychecks and calculations?

19 A. No, I have not.

20 Q. So if they were actually just going to pay the same
21 price, there would be no reason to bring it in from 300 miles
22 away, right?

23 A. You know, it doesn't seem to me that there would from
24 an economic perspective, but you know, there's a lot of
25 relationship I know in supply, you know, supply arrangements

1 between plants. And if a producer has good quality milk and
2 provides a, you know, essentially the kind of milk that they
3 are looking for, and isn't, that they don't have problems with
4 it, sometimes there's value in that relationship.

5 Q. Okay. So as you -- as you go along, you haven't
6 plotted Table 2?

7 A. No, I have not plotted it.

8 Q. Or plotted it with respect to supply and demand in
9 California?

10 A. No, I have not.

11 Q. Okay. And but if you did, you look at other periods of
12 glut in California that show up in Figure 2, 2012, you have got
13 a, you testified to a period of glut there?

14 A. Correct.

15 Q. And 2012 on Table 2 of Exhibit 80, imports of milk were
16 actually higher than 2011, correct?

17 A. Uh-huh.

18 Q. Okay. And was there, I, you know, on Figure 2 is there
19 a, you know, show a glut of milk earlier this year or late in
20 2014?

21 A. 2014 I think, yeah.

22 Q. Yeah. And the imports have continued to come into
23 California?

24 A. Right. At a lower pace, but yes, they continue to come
25 in.

1 Q. Okay. And the best of your knowledge, as you have
2 testified, the bulk of those imports are Class I?

3 A. Yeah, I believe so. I was looking at the CDFA data on
4 that, and I, my gosh, I'm trying to figure out which chart I
5 pulled it from. Probably it was, well, I don't remember now,
6 but I, you know, it was, as I calculated it from the, I think
7 it was the 2014 data, something just under 80 percent was
8 Class I.

9 Q. Okay. So there's some CDFA data in the record that
10 shows --

11 A. I believe there's some there.

12 Q. Okay. Now -- okay. So 80 percent, right now, let's
13 just look at that currently then. Right now there's roughly 45
14 million pounds a month coming in, correct?

15 A. Yes, looks like it.

16 Q. And 80 percent, yeah, about, do you have a phone
17 calculator you can do some simple --

18 A. I left my phone somewhere else, sorry.

19 Q. -- math, maybe you can do it in your head?

20 JUDGE CLIFTON: Let's let him get his calculator, this is
21 important.

22 MR. ENGLISH: Actually, your Honor, he doesn't have to do
23 calculations. Nobody else did calculations.

24 JUDGE CLIFTON: Look this would be valuable, and he is so
25 quick, I --

1 DR. SCHIEK: Thank you for that.

2 JUDGE CLIFTON: Well, it is right, you can do it with a pen
3 and pencil, you can do it with a calculator, sometimes it's
4 easier if you have your phone if that's what you are used to
5 using. If you want him to use pen and pencil, we'll do it that
6 way, Mr. English.

7 MR. ENGLISH: Your Honor, I'm just saying that it is not
8 appropriate cross-examination.

9 JUDGE CLIFTON: I disagree with you.

10 MR. ENGLISH: If you are insisting otherwise, then fine, I
11 disagree.

12 JUDGE CLIFTON: All right. Your objection is noted,
13 Mr. English. Dr. Schiek, you may step down to get your phone
14 if you would like.

15 DR. SCHIEK: That would probably be more accurate.

16 So I'm using the number you gave me at 45 million, is
17 that about 45 million?

18 BY MR. BESHORE:

19 Q. Yeah, I think that's what I estimated and you agreed
20 with yesterday.

21 A. Looked about right, yeah.

22 Q. And --

23 A. And we're going times 80.

24 Q. Times 80, 80 percent.

25 A. 36 million a month.

1 Q. Okay. And so if we actually looked at the latest info
2 in June of 2015 on, you know, CDFA-X or Y, it was about
3 47 million?

4 A. Correct.

5 Q. Okay. So -- okay. So 36 billion and that's Class I.
6 Now, you didn't, I don't recall, the Class I figures in Table,
7 the in-state Class I consumption utilization figures in
8 Exhibit 80, you didn't use CDFA pool numbers, you used per
9 capita estimates, correct?

10 A. In --

11 Q. Or maybe I missed, if you have pool numbers there?

12 A. Which -- which chart are we walk talking about, if I
13 may ask?

14 Q. Any chart?

15 A. Any of the Class I sales data?

16 Q. Yeah.

17 A. Or Table 12 maybe, is that what we're looking at?

18 Q. Either Figure 12, well, does Table 12, what I'm looking
19 for, and I don't know if it is in your data or not, what I'm
20 looking for is the monthly volume of pooled Class I in the, in
21 the California State Order. Is that in your tables?

22 A. The monthly volume of pooled California Class I, it's
23 not in Table 12 where I talk about beverage including milk
24 sales. I believe that those numbers are calculated based on,
25 based on Class I sales from plants in California, Class I

1 product sales from plants in California.

2 Q. Okay.

3 A. So they -- they would, if bulk milk is coming in in
4 those plants, I believe that would be included in this data,
5 this is a CDFA source.

6 Q. Okay. So the bulk milk would show up in the data,
7 assuming it is consumed and, processed and consumed in
8 California?

9 A. I don't even know if it is necessarily consumed in
10 California, but probably it is, yeah.

11 Q. But your data on Table 12 is not pooled, State Order
12 pool Class I?

13 A. Yes, this doesn't come off the pooling reports.

14 Q. Okay. Let's look at Exhibit 64, let's go to that
15 exhibit, and I'm on Table 5.C.6 page 6?

16 A. C.6. Okay. I'm there.

17 Q. Okay. So if we look at, you know, 2015 numbers, so I
18 want to simplify this, but I want you to give us a calculation.
19 If we look at 2015 numbers, Class I percentage is a high of
20 13.03 in January to a low of 12.17 in April, correct?

21 A. Yeah. 12. I'm sorry, where are you again,
22 Mr. Beshore?

23 Q. Well, I was on the top, the top table, 5.C.6, which is
24 monthly State Order total pounds pooled, Column 3, and then
25 utilization percentages.

1 A. I gotcha.

2 JUDGE CLIFTON: Mr. Beshore, is May lower than April?

3 MR. BESHORE: It is, your Honor.

4 JUDGE CLIFTON: Okay.

5 MR. BESHORE: Yes. 12.06 in May.

6 BY MR. BESHORE:

7 Q. I don't know if there's a summary for 2015. There it
8 is. 2015 average, the very bottom line on this page.

9 A. Okay. 12.45, is that the number?

10 Q. Right. So why don't you take that times the monthly
11 average. 12.45 times the monthly average of 2015, to see what
12 the monthly pounds of Class I pooled in the State Order are.

13 A. Hold on. I think I have roughly 428.9 billion pounds.

14 Q. Okay. Very good. That's what I got, also. Okay. So
15 we got an average about 428.9 million pounds of Class I pooled
16 in the Order, monthly average for 2015, this year. But then we
17 have got 36 million pounds per month.

18 JUDGE CLIFTON: Wait a minute, you said monthly average.
19 You don't mean monthly average, do you?

20 MR. BESHORE: I think I do.

21 JUDGE CLIFTON: Okay. So -- so we took, we took a number
22 that represented not an average but a total so far for 2015?

23 MR. BESHORE: Actually, the last line on 2015, on Table
24 5.C.6 of Exhibit 64 is the 2015 average.

25 JUDGE CLIFTON: Average. So it did give me a monthly

1 amount.

2 MR. BESHORE: Yes.

3 JUDGE CLIFTON: Is that right, Dr. Schiek?

4 DR. SCHIEK: I believe so, yes.

5 JUDGE CLIFTON: Okay. All right. I'm with you now.

6 Thank you, Mr. Beshore.

7 BY MR. BESHORE:

8 Q. Okay. As an average pool Class I, 428.9 million, 12.45
9 percent of the supply that's pooled, but we have got outside of
10 the pool coming in from out-of-state, 36 million pounds per
11 month.

12 A. Correct.

13 Q. Okay. Now, is there a -- you talked about quarterly
14 marketing as you conceive it to involve getting Class I milk
15 from reasonable locations to Class I plants when they need it.

16 A. Uh-huh.

17 Q. Is that a picture of orderly marketing in California?

18 A. So you are looking at 36 million pounds coming in over
19 that share of, certainly that's a movement that doesn't look to
20 be efficient --

21 Q. Right.

22 A. -- in a pure closest milk moves first kind of thing.

23 Q. In fact, isn't it correct, just to kind of cut to the
24 chase, the only reason that milk comes in is because of the
25 artifact of the regulations in terms of how it's priced or not

1 priced, not pooled, under the California State Order in which
2 did not, which cannot, as we have heard repeatedly giving the
3 Hillside litigation, etcetera, etcetera, which cannot regulate
4 that transaction?

5 A. I think the economic draw of being able to earn the
6 plant blend is a major reason why that milk comes in, at least
7 in the case of Northern Nevada shippers. In the case of the
8 Southern Nevada or Southern Nevada, Southern California, I'm
9 not sure, given the common ownership there, whether that's the
10 key issue or whether it is something else.

11 Q. Now, of course if there's was a Federal -- let me back
12 up a second. That 36 million pounds monthly of Class I, which
13 is not in the California pool, represents a net reduction in
14 the blend price in that, to the pool?

15 A. In the pool prices.

16 Q. In the pool prices. Correct?

17 A. Yeah, I think so.

18 Q. Okay. So if we're going to estimate that, would, you
19 know, would \$2.00 a hundredweight be a reasonable value to
20 estimate the net loss of that is Class I sales?

21 A. Over the whole pool?

22 Q. To the pool. Not on a whole pool, just \$2.00 for each
23 hundredweight coming in would be the revenue, sort of the net
24 revenue loss to the pool, if you got a Class I differential
25 that's in that --

1 A. If you had a Class I differential it is \$2.00
2 hundredweight, yeah. Well, I'm not sure exactly how much it
3 would be, but it would be a reduction in the, in the pool
4 value.

5 Q. Have you ever calculated how much that, those nonpool
6 transactions cost California dairy farmers its milk in its
7 pool?

8 A. I have not. I have not.

9 Q. If \$2.00, just assume with me for a moment that \$2.00 a
10 hundredweight for each of those Class I hundredweights not
11 pooled, 36 million pounds, how many hundredweights would that
12 be, and what would the monthly cost be at \$2.00 per
13 hundredweight to the pool?

14 A. With that example, roughly I get 21 cents.

15 Q. 21 cents of what? 21 cents what, reduction in the pool
16 price?

17 A. I believe that's correct.

18 Q. Okay. So not having those transactions pooled, by your
19 calculations, cost the California dairy farmers 21 cents per
20 hundredweight per month?

21 MR. ENGLISH: I object to that characterization. It
22 was not his calculation, it was your calculation that you asked
23 him to make, making assumptions, so it is not his calculation.
24 I object to that.

25 JUDGE CLIFTON: Your objection is noted, the witness may

1 answer.

2 DR. SCHIEK: I would say the same thing. Based on the
3 numbers you gave me, and the numbers we looked at in these
4 tables, that would be the result.

5 BY MR. BESHORE:

6 Q. Okay. And, of course, we could, you know, we could all
7 do the arithmetic, but there is clearly a cost to the pool?

8 A. To having out-of-state milk -- to having out-of-state
9 milk come into California and not be pooled.

10 Q. Of course the Federal Order would pool that milk, do
11 you understand that?

12 A. I do understand that.

13 Q. Because it can -- can, and one of its main purposes is
14 to capture interstate transactions, correct?

15 A. Correct.

16 Q. Did you reference the Carolina Order as being, one of
17 the reasons for that Order being promulgated, was to capture
18 the interstate transactions that the state couldn't capture?

19 A. Yeah, in response to a question from Mr. English, I was
20 describing the conditions there as that there was, there was a
21 state regulation and there was milk entering that was
22 undermining the system.

23 Q. Okay. Now, you have participated in the
24 producer-handler hearing. I think, we were aligned. Do you
25 recall that?

1 JUDGE CLIFTON: Just a moment. Tyler, would you see if you
2 can make the microphone be where Mr. Beshore's mouth is?

3 Stay there, Mr. Beshore, stay there as if you are
4 looking at your papers and asking the questions, seeing your
5 papers. Thank you so much. All right.

6 So you were aligned in the proceeding you are asking
7 him about. You may resume.

8 DR. SCHIEK: I think he was asking if I remembered it. And
9 it does seem like a distant memory now, but I do remember it.

10 BY MR. BESHORE:

11 Q. Okay. And we were aligned in that --

12 A. Correct. Yes, we were.

13 Q. And of course that proceeding had to do with milk of
14 producer-handlers that was not part of the Federal Order pools,
15 correct?

16 A. Yes, I believe so, yes.

17 Q. We were, you, and me, on behalf of my clients, you on
18 behalf of Dairy Institute, were urging the Secretary to modify
19 those regulations to make sure that milk was part of the pool,
20 correct?

21 A. I would have to look back at my statement. I believe
22 how we characterized our testimony, or I characterized my
23 testimony at that hearing, was that we felt by putting the
24 California experience, producer-handlers in the record, it
25 would be helpful information for the Secretary because there

1 was a proposal for what we would call a soft cap that one of
2 the producer-handlers had put in, and we saw similarities
3 between that and what we experienced in California. I believe,
4 I don't know that we were advocating one particular way, we
5 were just explaining our experience with producer-handlers in
6 California.

7 Q. Fair enough. In any event, did you read the decision
8 that resulted from that, from that proceeding?

9 A. Awhile ago, yeah.

10 Q. Okay. Do you recall that in that decision the
11 Secretary determined and held that a diminution, a reduction of
12 the blend price of as little as one cent, one penny, would
13 cause an unpooled unregulated producer-handler of Class I milk
14 was a disorderly marketing condition that needed to be
15 corrected?

16 A. I'm not saying that it didn't say that, I just don't
17 remember that.

18 Q. Okay. Fair enough. Let me turn, then, to the, some of
19 the cost of production information. If I can change topics
20 here, shuffle my papers the right way. So the cost of --

21 A. Is this in Exhibit 80?

22 Q. Exhibit 80, yeah. I was really, really interested in
23 seeing that you had used ERS data, the cost of production for
24 any purpose. And I'm looking at, I guess page 24 to 25, and
25 it's possible that you show that on, I don't know if you show

1 that on any other figures?

2 A. No, it is just 24 and 25.

3 Q. Okay. Figure 11, Table 11.

4 A. Correct.

5 Q. So as an Economist and someone knowledgeable about milk
6 production, you know, you are not seriously contending that
7 cost of production in California is, you know, what, \$8.00,
8 \$9.00, \$10.00 or more less than that in Wisconsin?

9 A. That would not be my understanding or feeling in the
10 marketplace that the advantage is that large. I tried to come
11 talk a little bit about the limitations of this data, but
12 again, I said this, to my knowledge, is the only data set on
13 milk production cost that that's a common methodology across
14 states. So I just present it as it is. Recognize that it has
15 some warts in terms of the total, how they calculate total
16 economic cost, which is different than an accounting cost.

17 Q. But are you contending that it actually means
18 something?

19 A. I think in general, that the sort of ordinal ranking
20 here is probably accurate. And that's mainly because of the
21 size distribution of dairy farms in California versus the U.S.
22 average versus Wisconsin.

23 Q. By ordinal ranking, you mean the cost, you think the
24 cost in California is less than the cost in Wisconsin because
25 the farms are bigger?

1 A. On average, yes.

2 Q. On average. Recent production trends in Wisconsin
3 versus California would reflect, if anything, that these costs,
4 the relationship, set aside the absolute cost level, that the
5 relationship might be flip-flopped; isn't that fair?

6 A. In terms of cost is it?

7 Q. Yes.

8 A. Not necessarily. I mean, well, there's different
9 market conditions on prices, there's proximity to markets,
10 there's probably a number of reasons. And then there's what's
11 going on out here with the drought, which is impacting things.

12 Q. Okay. But production has, has and is expanding in
13 Wisconsin while it is contracting in California?

14 A. It's contracted this year. I think if you look at the
15 trend from 2000 to 2014, it's still an upward trend, granted
16 not as fast as in the past. So if one year makes a trend, it
17 certainly is contracted this year, I will say that for sure,
18 that's undeniable.

19 Q. So might -- now, I want to turn to Figure 1 of your
20 Exhibit 80, where you, which I think is a, you know, a useful,
21 a useful chart, graph, where you plot the Federal Order whey
22 value versus California whey value. Okay? Have you thought
23 about looking at California production versus other state's
24 production, and the national production during the period which
25 shows so clearly on Figure 1, when the whey value in California

1 has lagged, the national average, so the national whey values
2 so significantly, and I'm talking about from 2009 to the
3 present.

4 A. So you are, I'm just trying to get my mind around your
5 question. Your question is, have I looked at cost during that
6 period or I misunderstood you?

7 Q. Production trends.

8 A. Production trends. Well, I think in Exhibit 80 I broke
9 out something close to that ranking or that time period. Just
10 by looking at the decades, in looking at 2010 forward, 2010
11 through 2014, which shows a slower growth rate for California
12 versus the U.S. or versus the all of the U.S. except
13 California.

14 Q. Your Honor, I would like to have marked as next
15 numbered exhibit a one-page document.

16 JUDGE CLIFTON: Yes. Thank you. Ms. Elliott, are we going
17 to mark the next exhibit as Exhibit 88?

18 MS. ELLIOTT: That's correct.

19 JUDGE CLIFTON: We'll mark this as Exhibit 88. 88.

20 (Thereafter, Exhibit 88 was marked
21 for identification.)

22 JUDGE CLIFTON: It's being distributed now. Raise your
23 hand if you need an Exhibit 88. Mr. Beshore, you may proceed.

24 BY MR. BESHORE:

25 Q. Okay. Thank you. Do you have Exhibit 88, Dr. Schiek?

1 A. I do, I forgot to mark it.

2 Q. Okay. So I think all of, much of this data, maybe all
3 of it is in Exhibit 80.

4 A. From my table, Table 4?

5 Q. Exhibit 80 in one of your tables.

6 A. Yes, I believe it is Table 4.

7 Q. Which is page what?

8 A. Page 10.

9 Q. Okay. But it doesn't plot it, you haven't used 2009?

10 A. As the base year.

11 Q. As the base year?

12 A. No, I have not.

13 Q. And so I thought it might be interesting, in view of
14 the information on your table, on your Figure 1 with respect to
15 the whey price in California, to plot production trends in
16 California versus, you know, other parts of the country that
17 have the Federal Order whey value, and that's what we have done
18 in Exhibit 68. Do you see that?

19 A. Yeah, I see that.

20 Q. Okay. And what it shows, I think as you have, may have
21 indicated, California lags, Wisconsin, New York, Florida, and
22 United States. Correct?

23 A. For that period of time, yes.

24 Q. Okay. Let me just shift back to an area that, at least
25 I almost got to yesterday but didn't, that's just talking about

1 terminology. You have used the term "disorderly" 26 times in
2 Exhibit 79, by our count. Does that sound fair?

3 A. I haven't counted.

4 Q. Is the word -- you heard Mr. Christ's testimony?

5 A. I did, I was here for his testimony.

6 Q. Okay. He testified he didn't find the word disorderly
7 in the Marketing Agreement Act. Have you looked for it in the
8 Act?

9 A. I have not seen it there, either.

10 Q. Okay. How about in the California statutes?

11 A. Orderly marketing is in there, but there is not
12 disorderly.

13 Q. Disorderly is not there?

14 A. I don't -- it is not coming to my recollection that it
15 is there. I don't, I can't say for certain that it is not
16 there.

17 Q. And have you seen a published definition of it
18 anywhere?

19 A. Of disorderly?

20 Q. Yes.

21 A. I don't recall.

22 Q. So what's your definition? When you used it then, you
23 weren't using a statutory definition, but you were using, or a
24 published definition, you were using your own definition; is
25 that correct?

1 A. Yes. I was using a definition that I adopted. I
2 believe it is also -- okay. Let me back up. So disorderly, in
3 my view, would be absence of orderly. And so there are folks
4 who have written on the topic of what constitutes orderly
5 marketing, so it would be the absence of orderly marketing and
6 things that are contrary to orderly marketing.

7 Q. And that would be orderly marketing as you
8 previously --

9 A. Described it.

10 Q. -- described it, yeah. I asked you yesterday if you
11 had done any study of Order 2 and how its provisions operate,
12 pooling, that sort of thing. Do you recall that?

13 A. I remember your discussion of grandfather plants in
14 Order 2 I think is. 5 studies of it since then.

15 Q. Have you done any study of any Federal Order Market,
16 any study of any Federal Order Market, in terms of the
17 effective prices paid for Class III or Class IV milk?

18 A. No, I have not. I think that what's publicly available
19 is, is regulated minimum prices.

20 Q. Your Honor, if I might have a couple of minutes, I
21 would suggest a short break and I may not have anymore
22 questions for Dr. Schiek.

23 JUDGE CLIFTON: I think that's a good idea. Do you want 10
24 minutes or 15 minutes, Mr. Beshore?

25 MR. BESHORE: I'll take 15.

1 JUDGE CLIFTON: 15. All right. Then please be back and
2 ready to go at 11:10. 11:10.

3 (Whereupon, a break was taken.)

4 JUDGE CLIFTON: We're back on record, it is 11:13.

5 Chip English. If I may, your Honor, I'm going to have
6 Dr. Schiek respond to raised earlier questions by Mr. Beshore
7 before we get started.

8 And during the break, Mr. Schiek, did you consult with
9 your Executive Director?

10 DR. SCHIEK: I did.

11 MR. SCHIEK: And do you now have both permission and
12 information to provide about members of the Dairy Institute?

13 DR. SCHIEK: I do.

14 MR. ENGLISH: Before you do that, could you explain for the
15 record why it is that trade associations do not normally
16 provide that information?

17 DR. SCHIEK: Yeah, that information is not normally
18 provided because it becomes a target for solicitors to contact
19 our members offering all kinds of products and business
20 services and the like. So, but I have the list, and rather
21 than, if it is okay with you, Mr. Beshore, rather than read in
22 the missing ones, I will just read the whole list.

23 MR. BESHORE: Sure. Fine.

24 DR. SCHIEK: So the companies are:

25 Alta Dena, Berkeley Farms, Cacique, Clover Stornetta,

1 do you need spellings?

2 JUDGE CLIFTON: What is the best way for us to get that in
3 the record? Would it be -- is it something you can e-mail for
4 example, or --

5 DR. SCHIEK: I would like to just read it in.

6 JUDGE CLIFTON: Just read it. Then I better get the
7 spellings, I'm sorry. It will also help me in trying to keep
8 up with you, if you have to spell them before you go to the
9 next one.

10 DR. SCHIEK: So Alta Dena is A-L-T-A, D-E-N-A; Berkeley
11 Farms, B-E-R-K-E-L-E-Y, F-A-R-M-S; Cacique, C-A-C-I-Q-U-E;
12 clover Stornetta, C-L-O-V-E-R, S-T-O-R-N-E-T-T-A; Dean, D-E-A-N
13 Foods Company; and then Dean Foods Pacific Coast Group;
14 Driftwood Dairy, that's D-R-I-F-T-W-O-O-D Dairy; Farmdale
15 F-A-R-M-D-A-L-E, Creamery; Joseph Farms, that's just like the
16 name J-O-S-E-P-H; and /Gallo Cheese, that's all one company.
17 G-A-L-L-O; Hilmar Cheese Company, H-I-L-M-A-R, cheese company;
18 HP Hood, H-O-O-D, HP is capital letters; Kraft, K-R-A-F-T
19 Foods; Leprino Foods, L-E-P-R-I-N-O; Marquez Brothers,
20 M-A-R-Q-U-E-Z Brothers; Nestle, N-E-S-T-L-E, USA; Pacific
21 Cheese, just like the ocean; Rumiano Cheese Company,
22 R-U-M-I-A-N-O; Safeway, Incorporated, Safeway is S-A-F-E-W-A-Y;
23 Saputo Cheese USA, S-A-P-U-T-O; Super Store Industries, three
24 words; United Grocer's Company's, the company's changed names
25 several times, I think that was pretty self-explanatory, move

1 on. White Wave Foods, W-H-I-T-E, W-A-V-E, Foods.
2 Yoplait-General Mills, Yoplait is Y-O-P-L-A-I-T, General Mills.
3 And Yakult, Y-A-K-U-L-T, Yakult; and Fairlife, F-A-I-R-L-I-F-E.
4 JUDGE CLIFTON: So of course I'm curious as to why Fairlife
5 isn't alphabetically listed like everybody else.
6 DR. SCHIEK: They are affiliate members.
7 JUDGE CLIFTON: Okay.
8 DR. SCHIEK: They are an affiliate member company.
9 MR. ENGLISH: And if I may, because the witness was
10 startled, it appears there might have been an auto correct. If
11 it was Unified Grocers rather than be United Grocers, would
12 that make more sense to you?
13 DR. SCHIEK: Yes.
14 JUDGE CLIFTON: Thank you. So not United, but Unified.
15 DR. SCHIEK: Yes.
16 JUDGE CLIFTON: Good. Mr. Beshore?
17 BY MR. BESHORE:
18 Q. What did you say the status of Fairlife was?
19 A. An affiliate member.
20 Q. Is that the only entity that is an affiliate as opposed
21 to a full member?
22 A. And Yakult is also an affiliate member.
23 Q. Okay. The others are full members?
24 A. Yes.
25 Q. Do you have the information as to the four that were on

1 the list of 30 in June that aren't any longer on the list
2 because they combined or merged?

3 A. No, I don't.

4 Q. Do you know, do you happen to know them? I mean, the
5 names may be spell out for us, trade names I assume?

6 A. Yes, I don't really know which of those are.

7 Q. Okay.

8 JUDGE CLIFTON: We need a little more volume on Dr. Schiek.

9 DR. SCHIEK: I don't rally know which those are.

10 BY MR. BESHORE:

11 Q. Okay. Thank you for providing that information for the
12 record, Dr. Schiek. And I have just a couple of more questions
13 and then I'm done for this round anyway.

14 I'm interested in some contrasts I see in the Dairy
15 Institute position as you've articulated it. I just want to
16 ask you about them a little bit.

17 On at least three times in your statement, Exhibit 79,
18 pages 7, 18, 19, well, on my notes at least, and it might be
19 others sometimes, you have indicated affirmatively that it was
20 important that California State Order prices track Federal
21 Order prices in Class I prices in particular. Do you recall
22 that?

23 A. Yes. 7, what were the other references that you said?

24 Q. Yeah, my notes say 7, 18, and 19, there could be more.
25 I'm not trying to be exhaustive but --

1 A. Okay. I'm just trying to look at those references if I
2 could for a moment.

3 Q. Absolutely. Okay.

4 A. I see what you are talking about.

5 Q. Okay. And did I state it correctly, that you have
6 affirmatively advocated the State Order Class I prices should
7 track the FMMO Federal Milk Market Order prices?

8 A. Yeah, I think tracking in a reasonable way is
9 important.

10 Q. And --

11 JUDGE CLIFTON: Could I inquire, Dr. Schiek, I notice on
12 the top of page 19 you are talking about tracking movements.

13 DR. SCHIEK: Right, tracking the movements.

14 JUDGE CLIFTON: Is that what you meant by tracking?

15 DR. SCHIEK: Price movements. Yes. Pretty much.

16 JUDGE CLIFTON: Okay. So --

17 BY MR. BESHORE:

18 Q. So moving up when they move up, moving down when they
19 move down, that sort of thing?

20 A. That would be desirable, yeah.

21 Q. Okay. But it is much, your policy and what you
22 advocate with respect to Federal Order Class III prices and IV
23 prices, and II prices, is not that they track, but that they
24 had their own track. Isn't that fair to say?

25 A. Yeah, that's fair to say.

1 Q. Okay. So Class I needs to track Federal, but the
2 others can be on their own track, California track?

3 A. I believe so, yes.

4 Q. And, again, with respect to Class I sales that are not
5 part of the California State Order pool at present and
6 therefore, not reflected in California dairy farmer blend
7 prices, okay?

8 A. Okay. You are talking about the bulk milk imports?

9 Q. I'm talking about two categories, and I just want to
10 contrast your position. Bulk milk imports which we've talked
11 about this morning and which are not a policy concern at
12 present, as far as the Dairy Institute is concerned, correct?

13 A. Not a present, no.

14 Q. However, a lesser quantity of nonpool sales, the 20
15 million pounds approximate monthly of exempt quota sales are a
16 matter of concern, correct?

17 A. They have been a matter of concern for our members,
18 yes.

19 Q. As you have indicated on page 37?

20 A. I have.

21 Q. So the view of, in both cases, they affect producers
22 the same, but your distributors have a different view with
23 respect to those two sets of, two sets of sales?

24 A. Yeah, I think there's a perception from the -- from the
25 exempt producer-handler that it's more of a competitive issue

1 than the other one, than the bulk milk imports.

2 Q. By the way, the exempt producer sales, of course, are
3 frozen in place?

4 A. Correct.

5 Q. And have been for what, since the early '90's?

6 A. Since 1995, I believe.

7 Q. '95, okay. So they can't increase, but the bulk
8 sales from out-of-state can increase, if they are --

9 A. They have at times, yeah, and calmed back down.

10 Q. Okay. So just one -- just one final note I want -- one
11 final thing to have in the record here, now seems like a
12 convenient time. We talked about your policy position that
13 cheddar is an appropriate product for, to base Class III prices
14 on. Do you recall that?

15 A. I remember saying that, yes.

16 Q. Okay. And that's Dairy Institute's position, correct?

17 A. It has been, yes.

18 Q. Right. And is in this hearing?

19 A. It is. Yes, it is still.

20 Q. Okay. So I just want to ask that we identify as the
21 next exhibit, a one-page document.

22 JUDGE CLIFTON: Ms. Elliott, will this be Exhibit 89?

23 MS. ELLIOTT: That's correct.

24 JUDGE CLIFTON: Thank you. Exhibit 89 is being
25 distributed.

1 (Thereafter, Exhibit 89 was marked
2 for identification.)

3 JUDGE CLIFTON: Please raise your hand if you need one.
4 Extra copies are being made. All right. I think we're good to
5 go even though the additional copies will be coming soon.

6 BY MR. BESHORE:

7 Q. Okay. Thank you, your Honor.

8 JUDGE CLIFTON: I think we're good. Just so I know, would
9 you raise your hand if you don't have your own copy or you are
10 going to have to give back one? Let's get one to Mr. Hollon.
11 We do need half a dozen more. We're good.

12 BY MR. BESHORE:

13 Q. Okay. Dr. Schiek, do you have the one-page document
14 that's been marked as Exhibit 89?

15 A. I do, yes.

16 Q. And it has the title Real California Cheese Facts,
17 correct?

18 A. Correct.

19 Q. And it is, as indicated on it, was printed a day or two
20 ago from California Milk Advisory Board web page. Have you
21 ever visited that web page?

22 A. On occasion, yeah.

23 Q. Okay.

24 A. It's not one I regularly check, but I have seen it.

25 Q. Okay. Do -- I thought it capsulized on one page was a

1 nice summary of California cheese production. Is it a source
2 from CDFA, USDA as indicated on it. Does it look correct to
3 you?

4 A. As far as I can tell, it references CDFA data, it's
5 probably correct.

6 Q. And just with respect to our, you know, the prior
7 question there. Cheddar production is about 15.4 percent of
8 California cheese in 2014?

9 A. Correct.

10 Q. Okay. And you are satisfied that it should be used to
11 price all milk going into cheese in California?

12 A. Yes, I am.

13 Q. Thank you. I have no further questions for Dr. Schiek
14 at this time. I would move admission of 88 and 89.

15 I want to, Dr. Schiek, I want to give you the
16 opportunity to report a math check --

17 A. Yes, thank you.

18 Q. -- which I called to your attention --

19 A. Yes.

20 Q. -- at the break.

21 A. Yes.

22 Q. Go ahead.

23 A. The calculation you were asking me to do of the, I
24 believe, the milk coming, bulk milk coming in from out-of-state
25 that was Class I, to get a rough impact on how, if it was, if

1 it was drawing \$2.00 a hundredweight, the Class I differential,
2 for example, to estimate the impact on the pool. And I believe
3 you said 21 cents and it is 2.1 cents.

4 Q. Got a decimal off there?

5 A. Yeah, you know, probably I was hitting the numbers and
6 one of them didn't go, you know, in the calculator.

7 Q. Very good. Thank you.

8 A. Thank you.

9 JUDGE CLIFTON: Now, Mr. Beshore, truly you called to that
10 to his attention?

11 MR. BESHORE: I'll let the witness respond.

12 JUDGE CLIFTON: Is this true Dr. Schiek?

13 DR. SCHIEK: Yeah, he mentioned, "Are you going to fix the
14 math error?"

15 JUDGE CLIFTON: I love this Dairy Bar as you are known,
16 Milk Bar. You are just excellent.

17 MR. ENGLISH: Your Honor, I rise for a point of order.
18 First, I thank Mr. Beshore for doing that, that is, correcting
19 it. But this is the hazard about why I objected of having a
20 witness make calculations on the witness stand. And it raises
21 a significant concern. I think my objection was valid. We
22 have just had an error of a magnitude of ten. And again, while
23 Mr. Beshore has identified it and fixed it, this is why I
24 believe my objection about how having the witnesses do
25 calculations on the fly is a hazard.

1 JUDGE CLIFTON: Thank you, Mr. English. All right. Who
2 will next question Dr. Schiek? Mr. Beshore?

3 MR. BESHORE: No, I'm sorry. I intended to move admission
4 of 88 and 89, I think we got off track there, but I would like
5 to do that.

6 JUDGE CLIFTON: All right. Good. Is there anyone who
7 would like to ask further questions of Dr. Schiek before
8 determining whether you have any objection to the admission
9 into evidence of Exhibit 88? You will still get your chance to
10 question Dr. Schiek in cross-examination, but this is just a
11 little step before then. So with regard to Exhibit 88, does
12 anyone wish to question Dr. Schiek before determining whether
13 you object? There's no one. Is there any objection to the
14 admission into evidence of Exhibit 88? There is none.
15 Exhibit 88 is admitted into evidence.

16 (Thereafter, Exhibit 88 was
17 received into evidence.)

18 JUDGE CLIFTON: Regarding Exhibit 89. Does anyone wish to
19 question Dr. Schiek before determining whether you have any
20 objection? There is no one. Is there any objection to the
21 admission into evidence of Exhibit 89? There is none.
22 Exhibit 89 is admitted into evidence.

23 (Thereafter, Exhibit 89 was
24 received into evidence.)

25 JUDGE CLIFTON: Now I would ask for any further

1 cross-examination of Dr. Schiek?

2 MR. RAMIREZ: Good morning, Miguel Ramirez, Leprino Foods.

3 CROSS-EXAMINATION

4 BY MR. RAMIREZ:

5 Q. Good morning, Mr. Schiek, how are you?

6 A. Good morning.

7 Q. I'm sorry to ask some productively dumb questions here
8 on Exhibit 88, but as you know, I'm relatively new to this, and
9 obviously my lack of gray hair doesn't give me the same
10 competitive advantage as many of you guys have.

11 A. I don't have as much gray as the others.

12 Q. So when I look on Exhibit 88, and I look here at the
13 growth for different states, so I look at the particular case
14 of State of Minnesota, and is Minnesota part of the Federal
15 Order system?

16 A. I believe much of Minnesota is in the Upper Midwest
17 Milk Marketing Order.

18 Q. Does that imply that Minnesota receives the FMMO prices
19 for Class III and Class IV?

20 A. I believe that milk in Minnesota is pooled, it will
21 receive at least those minimum prices.

22 Q. So if the price they receive is the same as the rest of
23 the FMMO, why Minnesota milk production hasn't grown? Any
24 suggestions about that?

25 A. Well, I think when you look at, okay, keep in mind

1 these are, because they are indexed on from 2009, making 2009
2 equal to 100 percent, their percentage changes. But I think
3 there's a lot of reasons why production can either grow faster
4 or lag. Some of it has to do with premium levels, some of it
5 has to do with what else is going on in the feed costs, and
6 some of it has to do with the differences in production costs,
7 some of it has to do with weather, there's a lot of factors
8 so --

9 Q. So it's accurate to say that there are more factors
10 relating to growth rather than just pricing?

11 A. Rather than just minimum pricing discussions, yes.

12 Q. Rather than just minimum prices.

13 A. Correct.

14 Q. No further questions. Thank you so much.

15 JUDGE CLIFTON: Who next has questions for Dr. Schiek?

16 CROSS-EXAMINATION

17 BY MR. VETNE:

18 Q. John Vetne for Hilmar Cheese.

19 I just want to follow up a little bit on the exercise
20 you went through from which you derived the 2.1 cents impact.
21 Hypothetical involved a Class I differential of \$2.00.

22 A. That's correct.

23 Q. And were you assuming in that exercise that the
24 receiving plant, and therefore, the supplying producers, were
25 paid only on the basis of Class I use?

1 A. Correct. I was assuming that all that was, all that
2 milk coming in was 100 percent Class I milk, I believe.

3 Q. Okay. The system in California with out-of-state milk
4 essentially credits that milk not at Class I, but a plant
5 blend, it includes all the classified uses of the plant,
6 correct?

7 A. Correct.

8 Q. So in order to know the actual impact of out-of-state
9 milk, you would have to know what other uses are included which
10 create a plant blend, which creates the net incentive if there
11 is one?

12 A. That's correct. So, you know, if the assumption was a
13 \$2.00 Class I differential, then my calculation would have,
14 would have, as I understood the data, would have come in at
15 plant, excuse me, would have come in all at Class I. I'm
16 getting a little confused actually thinking about all of this.
17 But if the, you know, if the \$2.00 was on the plant blend, then
18 it would be, it would be less. Well, it would be -- it would
19 be the same amount if it was \$2.00 on the plant blend as
20 opposed to \$2.00 on the Class I.

21 Q. \$2.00 on plant blend would be \$2.00 net plant blend,
22 which could include Class I, maybe some Class II, some
23 shrinkage, and other factors, correct?

24 A. Correct. And I'll say, I'm not quite certain in terms
25 of the data, whether that milk estimate of percentage of

1 Class I was the percentage going to Class I plants, or whether
2 it was the percentage, whether it was percentage was, in fact,
3 all of Class I.

4 Q. Thank you.

5 JUDGE CLIFTON: Who next has questions for Dr. Schiek on
6 this topic?

7 CROSS-EXAMINATION

8 BY MR. DRYER:

9 Q. Greg Dryer.

10 Dr. Schiek, I was just looking at Exhibit 88, and I
11 just wanted to ask which of the states in the United States
12 milk production, grew the most from 2009 to 2014?

13 A. In terms of total pounds of milk production?

14 Q. Correct.

15 A. Well, the largest one on the chart that I put together,
16 which is Table 4, would have been California.

17 Q. Right.

18 A. California produced the most extra milk from 2000 --

19 Q. On a per day or per month or annual basis?

20 A. In total, yeah.

21 Q. Thank you, that's all I have.

22 JUDGE CLIFTON: I don't understand your answer, Dr. Schiek.
23 You said from the year 2000.

24 DR. SCHIEK: Oh, I'm sorry. From the year 2009 to 2014 is
25 what I meant.

1 JUDGE CLIFTON: Okay. Teach me how to read the chart so
2 that I see that.

3 DR. SCHIEK: So we're talking about, if we're talking about
4 Exhibit 88, what you would do is look at the left hand set of
5 columns, which is milk production in million pounds. And you
6 would subtract the -- from the 2014 number, you would subtract
7 the 2009 number. And looking at that difference, if I, again,
8 I'm making calculations on the stand. But I think California
9 added 2.8 billion pounds of milk during that period, Wisconsin
10 added about 2.6 billion, New York added about 1.3 billion,
11 Florida added 0.4 billion, and Minnesota added 0.1 billion
12 pounds during that period. And the U.S. as a whole, the entire
13 country, added 16.8 billion pounds.

14 So it gets back to the earlier notion that I talked
15 about, percentages, when you apply a smaller percentage to a
16 much larger milk production state, the actual pounds, extra
17 pounds being produced can be larger. When you look at the
18 percentages it might, you know, it might be misleading in terms
19 of total production. It tells us something about growth rates
20 to look at percentages. But in terms of actual pounds of milk
21 that have to be handled and processed, it's the pounds numbers
22 that matter.

23 JUDGE CLIFTON: Who else has questions for Dr. Schiek?

24 CROSS-EXAMINATION

25 BY MR. VANDENHEUVEL:

1 Q. Rob Vandenneuvel.

2 Good morning, Dr. Schiek.

3 A. Good morning, Mr. Vandenneuvel.

4 Q. You do much better than many others with the spelling
5 and saying my last name.

6 JUDGE CLIFTON: And I would like you to state your full
7 name, also.

8 MR. VANDENHEUVEL: Mr. Vandenneuvel. Rob Vandenneuvel,
9 V-A-N-D-E-N-H-E-U-V-E-L, with Milk Producers Council.

10 BY MR. VANDENHEUVEL:

11 Q. Yeah, I just wanted to follow up on a couple points,
12 and since we have been talking about Exhibit 88,
13 notwithstanding the observations that have been made about the
14 number of pounds increased versus the percentage, all that data
15 is included on a table that was in your packet, correct?

16 A. Correct.

17 Q. There is nothing new there?

18 A. I believe that's correct.

19 Q. Okay. And so really, the message of that table or that
20 chart, is that the appearance of the lines is dependent on
21 which year you use as a baseline. Would it be fair to
22 characterize that as really that's what, the only difference
23 between the data in Exhibit 88 and the data you include in
24 Exhibit 80 is the selection of a different baseline?

25 A. Yeah, that's, I believe that's true. It is the

1 difference is for 2009 base versus a 1985 base.

2 Q. So what Exhibit 88 does do is demonstrate that the
3 period of 2009 to present, represents a very different
4 relationship in California's percentage growth, relative to
5 other states in the rest of the country, versus the selection
6 of whatever you used in Exhibit 80, correct?

7 A. Yes. It shows a lower growth rate for California
8 relative to some other states, and I think I also captured that
9 in one of my tables showing 2010 to 2014.

10 Q. Okay. Fair enough.

11 And if I could direct you on the similar line here to
12 page 8 of Exhibit 80, and this would be table 3, U.S. and
13 California Milk Production Trends.

14 A. Page 8.

15 Q. Page 8, Table 3.

16 A. Correct. I got it.

17 Q. And I see information going from 1969 to 2014, and then
18 a break down of California, U.S., and basically non-California,
19 U.S.?

20 A. Correct.

21 Q. Characterizing. Now, Exhibit 88, uses 2009 as a
22 baseline, but I would actually ask that you look right above
23 that to 2008, where it states, in California, the California
24 milk production was approximately 41,203,000,000 pounds in
25 2008?

1 A. Uh-huh. Correct.

2 Q. And in 2014, California was 42,337,000,000 --

3 A. Correct.

4 Q. -- estimated production. The difference in those two
5 figures is about, would you believe if I told you, I'm not
6 going to ask you to make the calculation on the fly --

7 A. Thank you.

8 Q. -- it represents a 2.8 percent increase from 2008 to
9 2014?

10 A. If you tell me --

11 Q. It doesn't look out of -- it was -- people can do the
12 math on their calculator, but I'm just, I'm representing that
13 that is the case, and it appears that that could be the case?

14 A. Yeah.

15 Q. If you go to the sixth column, which is the rest of the
16 U.S. that is not California, and you take 2008's figure there,
17 you have got 148,775,000,000 pounds in 2008. Do you see that?

18 A. Uh-huh, yes, I do.

19 Q. And 2014, you have got 163,709,000,000 pounds --

20 A. Yes.

21 Q. -- in 2014?

22 A. That's correct.

23 Q. I have done the math there, and would you see a problem
24 with my calculation if that represents approximately 10 percent
25 increase in volumes for those two figures?

1 A. Let me just --

2 Q. So it is about a 15 billion pound --

3 A. Yeah, that would be about right --

4 Q. All right. 2008, the rest of the U.S., so in the
5 nondairy U.S. milk production was estimated at 148,775,000,000?

6 JUDGE CLIFTON: I'm sorry, you lost me with nondairy.

7 MR. VANDENHEUVEL: I speak better over top of Bill as
8 opposed to on my own. All right.

9 BY MR. VANDENHEUVEL:

10 Q. Let me start, I'm not going to go all the way back, but
11 the column labeled rest of the U.S. milk production, I
12 characterize that as the non-California U.S. milk production,
13 everything other than California. And in 2008, we notice that
14 the estimated milk production was 148,775,000,000 pounds. And
15 at the same time, we also recognize that 2014, in that same
16 column, was 163,709,000,000 pounds, which represented
17 approximately a 15 billion pound increase, which equated to a
18 10 percent increase, would that be the summary of our exchange?

19 A. Correct.

20 Q. Okay. So therein is another -- there is another
21 demonstration of depending on where you pick the baseline, in
22 this case looking at 2008, you see a very different
23 relationship in California's growth versus the everywhere else,
24 the other 80 percent of the country.

25 A. I would say the shorter the timeline that you are

1 looking at, the more sensitive the base year selection is. The
2 more sensitive the implication or the changes are to the base
3 year that you pick.

4 Q. Would you, in looking at those figures, could we
5 reasonably draw that California, really in 2014, has just
6 gotten back to where we were in terms of a little bit, 2
7 percent above where we were in 2008, whereas the rest of the
8 country has certainly seen some more structural growth in the
9 form of 10 percent?

10 A. Structural growth, I guess I don't know exactly what
11 you mean by that term, but in terms of the data, if your
12 calculation is correct, then you're right.

13 Q. Well, so, let me just explain the structural growth
14 then maybe that will help answer the question. We can't milk a
15 cow in the back of my house, so there has to be a facility. So
16 obviously there was enough facilities in 2008 to milk a little
17 over 41 billion, or produce a little more than 41 billion
18 pounds of milk?

19 A. Uh-huh.

20 Q. And while we saw drops in the years following, we've
21 now gotten back to that production level, but we're only 2
22 percent higher, whereas in the rest of the United States,
23 non-California, what I mean by structural is that 10 percent
24 growth would assume that there's been additional investment in
25 the industry, additional milk producing investment. Given that

1 definition of structural, is it fair to say it's likely there's
2 been more structural or more investment in new production
3 capacity in the rest of the country that hasn't happened in
4 California?

5 A. Yeah, I have no information on, you know, how much
6 investment there's been, but clearly there's been an increase
7 in production, and I imagine more cows in the rest of the U.S.
8 compared to California.

9 Q. Okay. One other, move -- changing topics -- one other
10 side note on one of the questions, an additional question on
11 the question you got regarding the calculation that you did on
12 the fly with Mr. Beshore. While a plant blend wasn't
13 calculated, the 36 million pounds that were in the calculation
14 was discounted from the 45 million pounds by a factor of 80
15 percent if I recall?

16 A. Yes. So I guess I was not clear when the question was
17 asked of me, and I have to look at the, kind of go back to the
18 original information I looked at. I was unclear if that 80
19 percent was all Class I or if it was 80 percent to Class I
20 plants. So I -- I just don't know off the top of my head.

21 Q. Okay.

22 A. Depending on which one it is, you know, it -- it could
23 be representative of the impact, or if it's, you know, if those
24 are Class I plants with a plant blend that's less than 100
25 percent Class I, it could be a little less than that.

1 Q. But just as a to be clear, when Mr. Beshore set up the
2 kind of the hypothetical situation, he was not using the full
3 bulk milk imported in the U.S. from your table --

4 A. He was not asking me to make that --

5 Q. He was factoring in a hypothetical adjustment of 80
6 percent to try to capture specifically Class I whether that's
7 accurate or not --

8 A. Correct.

9 Q. -- on the table?

10 A. Correct.

11 Q. And in same tone, he, or same token, he took, he built
12 in the hypothetical a \$2.00 Class I differential, which would
13 essentially be the dollars that a Class I plant would put into
14 the pool if they were buying pooled milk, as opposed to buying
15 from out-of-state?

16 A. Correct.

17 Q. Would it, would it surprise you to see data that the,
18 that Class I contribution for a Northern California plant
19 actually exceeded \$3.00 and closer to \$3.50 per hundredweight
20 during the last two years?

21 A. During the whole period, that I don't know.

22 Q. Okay.

23 A. I do know there have been months particularly when the
24 manufacturing class prices are moving down. You get, again
25 because of the timing of how these prices are calculated, the

1 advanced pricing on Class I tends to hang up high a little bit
2 longer, and if the manufacturing prices are moving down, you
3 can end up with a pretty big spread in a given month, and I
4 think that happened early 2015, for example. I think it tends
5 to happen sometimes, most often after the Fall period when we
6 have high demand, and afterwards commodity prices come down, so
7 you tend to see that spread a little between Class I and the
8 other classes.

9 Q. Okay. All right. Now I have got some questions that
10 were not generated in the last 15 minutes as part of your
11 questions.

12 I'll start with Exhibit 80, which is the figures and
13 tables, and I'll start with Table 7, which, let's see here,
14 appears to be page 13 of the packet. And this is, for those
15 who may be listening and aren't able to look at the packet,
16 this is a California milk Production Cow and Milk Per Cow for
17 1996 to 2014.

18 Do you see that chart?

19 A. I do.

20 Q. In your testimony you took a break from the written
21 part of your testimony and had some dialogue about this chart
22 with Mr. English as part of the direct examination, and there
23 were comments that you made that noted that the change from
24 prior year in milk production, in 2015 and in 2014, came
25 primarily from reductions in milk production per cow as opposed

1 to actual reduction in cow numbers. Do you remember that?

2 A. I think particularly looking at 2015 versus 2014, I
3 think the numbers there I had were showing for the
4 January through August period. The big change was in the milk
5 per cow, and also, yeah, you are correct, 2014 annual data
6 compared to 2013 annual data. Again, the numbers from USDA
7 show most of the change in milk per cow.

8 Q. Are you aware of how this data is collected by USDA?
9 The methodologies for collecting this data?

10 A. You know, I have looked at that methodology in the past
11 and I know there's a basis for their estimation. Granted that
12 they don't have people, boots on the ground every month through
13 the year making a count of number of cows.

14 Q. Now, given the fact that milk production is a very
15 important number, in fact, because milk production in the U.S.
16 has a check off attached to it, somebody pays a lot of very
17 close attention to how much milk is actually produced. So
18 would you agree that the California milk production is a fairly
19 reliable number given the data we have available?

20 A. Yes.

21 Q. And would you agree that the general methodology that
22 USDA uses would be to take the production numbers they have,
23 the cow numbers they have, and divide those cow numbers into
24 the production to come up with a production per cow, that
25 simple calculation? Would you agree with that?

1 A. I believe that's correct. I, again, I'm not a hundred
2 percent certain how they calculate it, but I believe that's
3 correct.

4 Q. Well, you would agree that that would make more sense
5 because the data on production per cow would be very difficult
6 to gather, and the other way -- the other way to calculate,
7 would you agree with me, you take the total production, somehow
8 calculate the production per cow, divide that into it to come
9 up with the number of cows? But your understanding is that
10 they likely don't do that given the difficulty in collecting
11 production per cow figure nationally?

12 A. Yeah, and that sounds reasonable, Mr. Vandenheuvel. I
13 don't actually know. I'm basically presenting USDA data as
14 it's published.

15 Q. Is it your understanding that the figures that are
16 pulled together for cow numbers are figures that are based on
17 some form of a survey of farmers across the country, some form
18 of phone or mail survey?

19 A. I believe there is some kind of a survey involved.

20 Q. We're close to an airport.

21 A. Yes, sounds that way.

22 Q. And so given the limitations of trying to gather
23 information on the sample to reflect what's going on on 50,000
24 individual dairy farmers, would you agree that there's certain
25 possibilities for, what's the word that comes, standards of

1 deviation and potential that's less of a reliable number than
2 production where we actually have reports?

3 A. I would agree with you, it is less of a reliable number
4 than milk production.

5 Q. So what we have really got is, we have got a really
6 reliable number showing that we have got 3.1 percent reduction
7 year over year in the first eight months of 2015, versus that
8 same period in the prior year, and less reliable numbers on the
9 number of cows, which, in turn, gives you maybe some discussion
10 points on where those reductions are coming in, but some
11 questions as to the reliability?

12 A. That's -- that's fair. Although I will say that the
13 milk per cow changes is consistent with other, again, more
14 anecdotal reports that I have been hearing published in Dairy
15 Market News and in hearing from mystery consultants about milk
16 per cow and about the quality and those issues, but your point
17 is right, I think.

18 Q. Okay.

19 JUDGE CLIFTON: Mr. Vandenheuvel, I didn't understand your
20 question when your question said, given the 3.1 percent
21 decrease shown in the months of 2015, and I thought you said
22 and the like decrease the prior year, is that what you said?

23 MR. VANDENHEUVEL: If I did, I misspoke because the prior
24 year didn't have a decrease.

25 JUDGE CLIFTON: Okay.

1 MR. VANDENHEUVEL: No, the 3.1 percent is in the third
2 column at the very bottom, represents the reduction in January
3 through August milk production in 2015, compared to the same
4 months in the prior year, 2014. So, and my point was, that
5 that number is more reliable than the others, which was what
6 our exchange was about.

7 BY MR. VANDENHEUVEL:

8 Q. All right. Turning to Figure 11, on Table 11, which
9 are related to the ERS data on cost of producing milk. I know
10 you have answered some questions from Mr. Beshore about this
11 already, and I just wanted to add an additional question here.
12 Specifically, on Table 11, specifically page 25, you have got
13 there, USDA milk production costs in California, Wisconsin, the
14 U.S., and then some comparisons between those different
15 columns, correct?

16 A. Correct.

17 Q. I had a chance to look up the website there on the
18 bottom of page 25, which is a website of USDA where this data
19 is kept, and they actually have quite a few more states.

20 A. Yes, they do.

21 Q. In this table you focused on California, Wisconsin, but
22 have you reviewed some of the other data?

23 A. I have.

24 Q. Yeah. I look specifically, an area that I was
25 interested in was the cost of production for Idaho?

1 A. Idaho was, yes.

2 Q. And Washington. Now, Idaho and Washington, you agree,
3 are separated by a shared border?

4 A. Correct.

5 Q. But that table, do you have in front of you the cost of
6 production for Idaho in 2014 and Washington?

7 A. I do.

8 Q. And what was the Idaho cost of production in 2014?

9 A. 16.03.

10 Q. And Washington?

11 A. Washington was 25.49.

12 Q. And do you have more data than just the most recent
13 years?

14 A. Right in front of me, no.

15 Q. Okay. But would it -- would it surprise you to know
16 that that relationship, a large gap makes this in 2010, 2011,
17 2012, 2013, and then, as well as the information you have?

18 A. No, it wouldn't surprise me.

19 Q. All right. And if I confirmed that, there's no reason
20 I would be making that up?

21 A. No, probably not.

22 Q. Is there any logic that can explain why we would see a
23 \$9 plus per hundredweight cost of production variance in two
24 neighboring states like that, that operate, not identical size
25 dairies, but large-scale dairies?

1 A. The only thing that I can think of is that there are
2 still smaller dairies in Washington in certain parts of the
3 state where, again, that issue of family draw, family labor
4 allocation, and I think I talked about the shortcomings in that
5 in my testimony, and that would be the only reason I would
6 expect to see a number that large, a difference that large,
7 excuse me.

8 Q. Okay. So does that, just given the information that we
9 have heard from previous questions and your own comments, this
10 study, or the USDA figures on cost of production compared to
11 boots on the ground analyses by either CDFA through their
12 auditing or independent accounting firms in their publications
13 in their service probably a better calculation of cost of
14 production? Would you agree with that?

15 A. Certainly I have a high regard for the CDFA cost of
16 production numbers as being accurate, because I know a little
17 bit more about how they are put together. And, again, we look
18 at, I think the industry looks at the accounting firm
19 information, Genske, Mulder, Frazer information. The
20 difficulty with that data, although I'm sure it's accurate
21 because it's based on the customer or their client's data, is
22 that it does not have a consistent sample from state to state.
23 You know what I'm getting at there. So this is the only
24 methodology that I'm aware of that's consistent from state to
25 state. And I think I tried to say in my testimony that there's

1 some issues in terms of the allocation of family, family unpaid
2 family labor that create some variations that are, you know,
3 look quite extreme. But as far as I know, it's the only one
4 where a consistent methodology is applied state to state.

5 Q. Okay.

6 A. Just to add a little more on the accounting data, and
7 again, I'm not -- I think the accountants do an excellent job,
8 but because it's their client base, it has a sample bias that's
9 depending on what kind of clients they have, so that was the
10 reason why -- why there's limitations with that data.

11 Q. Fair point.

12 JUDGE CLIFTON: Dr. Schiek, would you spell for me Genske,
13 Mulder, and Frazer?

14 DR. SCHIEK: Genske is G-E-N-S-K-E, and Mulder is
15 M-U-L-D-E-R, and then Frazer, I believe, is F-R-A-Z-E-R.

16 MR. VANDENHEUVEL: Those are accounting firms that have
17 clients in California and other regions of the country.

18 BY MR. VANDENHEUVEL:

19 Q. All right. Taking a look at Table 10, this would be a
20 couple pages earlier, page 21 of Exhibit 80. This is a
21 California statewide average milk cost of production by
22 quarter, 2013 to 2015. Do you see that?

23 A. 2003?

24 Q. I'm sorry, 2003, yes.

25 A. Yeah, it would have taken less time to put together if

1 it was 2013.

2 Q. I would agree. The total cost which is the fourth
3 column in that table, represents figures from a quarterly CDFA
4 report?

5 A. Correct.

6 Q. In reviewing those reports, it appears that the figures
7 represented there for total cost do not include the line items
8 of cost of management and return on investment?

9 A. They do not include the allowances for return on
10 management and return on investment.

11 Q. Is there a reason they were not included?

12 A. I think it's a better indicator of net margin because
13 what the dairy income less total cost information shows you
14 when it's calculated this way is, how much money is available
15 in terms of a return on management and investment. Rather than
16 saying return on investment should be X, return on management
17 should be Y, which is what the allowance does.

18 Q. So these figures would not, these cost figures would
19 not include an accounting for the cost of managing the dairy
20 that the owner has to do is his efforts in the business?

21 A. Well, correct, the way it's put in there. It's not a
22 draw, there's no draw represented for management, there's no
23 draw represented for return on investment. So if you look at a
24 number like minus 126, okay? Clearly then there's no money to
25 pay a return on investment in that quarter or a return on

1 management in that quarter. But if you look at 2005 first
2 quarter, for example, the dairy farm income less cost is \$2.51
3 a hundredweight, so that is the amount of money available for
4 return on investment, return on management in that quarter.

5 Q. Is it correct in terms of why CDFA calculates an
6 allowance for return on management and cost of management and
7 return on investment, are you aware of why they, why they
8 establish those figures in their report?

9 A. I think it's a way of trying to get at the sort of
10 long-run economic profit as opposed to a cost minus expenses.
11 And it's -- it's, they are putting in there a particular number
12 for return on investment, particular investment rate, based on
13 the net book value of the assets, and they are putting in there
14 a rate on return on management. And those are important
15 things, I think, to look at. But, like I said, this number
16 still gives you an idea of the margin that's available to cover
17 those. And it's either, it is either not money there or
18 there's money there.

19 Q. Are you aware of section, the section in the California
20 Food and Agriculture Code that specifically talks about, and
21 I'll quote, "in determining the cost" and we're talking about
22 the cost of production, "the director shall consider the cost
23 of management and a reasonable return on necessary capital
24 investment?" And is it possible that's likely the reason they
25 have to calculate this on a basis?

1 A. That's probably the reason were they include those
2 returns.

3 Q. Now, the Department of Food and Ag in California also
4 calculates the cost of manufacturing, manufacturing nonfat dry
5 milk and butter and cheese if they have enough data to publish
6 those calculations?

7 A. It does.

8 Q. And included in those costs is a cost of management,
9 administrative cost, and return on investment?

10 A. There's, yes, there's definitely administrative costs
11 and return on investment in those -- in those figures.

12 Q. All right. Now, I think I'm going to move to
13 Exhibit 79, so this would be your written testimony, and I'll
14 start with page 28. That's page 28, the one I have. I know
15 that that might be --

16 A. No, I have got them both here.

17 Q. All right. And before I go into something on here, as
18 a more general question, in stating the purpose of the
19 California State Order and the Federal Milk Marketing Orders,
20 would you agree that neither is designed to limit production or
21 create any limits to milk production in their regions?

22 A. I believe, yes, there are no limits set on the amount
23 of milk that can be produced. In other words, there's no, no,
24 what you might call a quota on the amount of milk that can be
25 produced.

1 Q. In fact, as we talked about, the purpose of the
2 California Order, or the purpose of Federal Milk Marketing
3 Orders, haven't we, the discussion been more about adequate
4 supply as opposed to limiting supply?

5 A. Adequate supply of milk for fluid use, correct.

6 Q. In the middle of page 28 I'm going to read two
7 sentences; "Therefore, in order for marketing to be orderly and
8 efficient, milk needs to clear the market by finding a plant
9 within a reasonable distance from where it is produced. If it
10 cannot, then it will be either dumped or hauled long distances
11 at great expense to find a home." Do you see those two
12 sentences I just read? Just making sure we're on the same
13 page?

14 A. Yeah, how far down?

15 Q. I'm sorry, about halfway, it is the bottom of the first
16 full paragraph on that page, starting with "therefore"?

17 A. Okay, I gotcha.

18 Q. And so specifically, looking at that second sentence
19 which is, "If it cannot, it will be either dumped or hauled
20 long distances at great expense to find a home."

21 A. Correct.

22 Q. One milk in California has been unable to find a home
23 at a "reasonable distance from where it is produced" from your
24 statement?

25 Do you know who pays the cost of either dumping that

1 milk or hauling it long distances at great expense?

2 A. Whoever is in, whoever is marketing the milk. Whoever
3 the handler is will haul it great distances.

4 Q. And is it true in California about 80 percent, as we
5 have heard in previous testimony, 80 percent of milk in
6 California is managed and handled by Cooperatives?

7 A. Yeah, I think what was testified to by the co-ops was
8 somewhat North of 75, 75 to 80, people use both numbers.

9 Q. We'll use 75. So three-quarters of that previous
10 testimony as indicated then, would you agree that
11 three-quarters of the milk is managed by Cooperatives, and
12 that, therefore, those Cooperatives who extend their milk that
13 they are managing and handling that can't find a home, it is
14 their expense to find an alternative home, either dumping or
15 hauled long distance at great expense?

16 A. Well, yes, they are the ones physically handling the
17 milk, and so they bear -- they bear that frontline expense. I
18 think the other question, though, is how it affects the
19 competitive situation. For example, if that milk were to get
20 sold to a cheese plant at a more distant location, milk that
21 they could not otherwise obtain at the price it's being offered
22 to them, it kind of becomes a competitive advantage compared to
23 the California cheese plant that is marketing, buying milk at
24 the regulated price in California, and marketing that, trying
25 to market that product.

1 Q. Just a minute. So those three Cooperatives have
2 testified, at least one of their representatives testified, if
3 not more, about some of the measures they have taken to try to
4 prevent the surplus situations by using Cooperatives base
5 plans. You have heard some of that discussion previously in
6 this hearing?

7 A. I have.

8 Q. And would it make sense that those Cooperatives are
9 aimed at trying to head off these surplus situations through
10 their activation of the base plans, because it becomes a great
11 expense to them to dispose of surplus milk when we get in a
12 surplus situation?

13 A. Yeah, it is my understanding that the way those base
14 plans work is that the producer exceeds his base, any expense
15 incurred in marketing that milk, excess milk, is charged back
16 to the producer.

17 Q. And so given that these Cooperatives, through their
18 handling of their members' milk, have that ability to, well,
19 have that obligation first to dispose of the milk, and then the
20 ability to assess the cost to their membership on the dairy,
21 and contrasted with what we discussed earlier, which is the
22 Federal Orders, is not, the Federal is State Orders are not
23 designed to limit production, would not the discussion about
24 how to deal with surplus milk be better dealt with by how the
25 handlers manage their milk, as opposed to trying to manipulate

1 production or influence production through regulated pricing?

2 A. No, I think when you look at the regulated market
3 system and the, you know, we talk about a working definition of
4 orderly marketing, I think the market, the regulated minimum
5 price should not be set above market clearing levels. That's
6 what I believe, and that's what we believe as an organization.

7 Q. But the term market clearing and that policy does not,
8 are you aware of where it exists in the regulations that
9 definition of a market clearing price and that standard for
10 setting manufactured milk prices?

11 A. There is a reference to it in the Final Decision
12 Federal Order Reform in 1999, I believe.

13 Q. There's a reference to prices need to be set at market
14 clearing levels?

15 A. Yes, I believe it doesn't say it exactly that way, but
16 it is pretty close.

17 Q. And as we heard earlier in this hearing, that because
18 our end product pricing formulas are based on actual
19 transactions and actual sales, wouldn't you agree that that
20 means, by extension, the milk prices that are paid for that
21 milk are based on what it took to clear the market of dairy
22 products?

23 A. No, I don't. I believe the market for dairy products
24 cleared nationally, and the milk markets have to clear locally.

25 Q. We had -- you had earlier, earlier questions from

1 Mr. Beshore about one of your charts, and I'm not going to make
2 you pull it up now because we have already discussed it
3 recently, but it was your own calculations of processing
4 capacity, California versus milk production, do you recall
5 those questions and your responses?

6 A. I believe I recall most of it, yes.

7 Q. So it would, given what we just talked about, would it
8 be your testimony that since -- since milk exceeded available
9 capacity during periods of time, California's prices have
10 actually been too high in our state? Our regulated minimum
11 prices have been too high?

12 A. I think at times they have been too high.

13 Q. All right. There was an exchange and it was part of
14 your discussion, I didn't write down the page number, part of
15 your discussion about Southern California, I just wanted to
16 have something noted for the record, clarified. You talked
17 about exchanges, or 1031 exchanges, and I know that neither of
18 us are accountants. So with that caveat, you are aware that,
19 and I think the term used yesterday was escape taxes. Those
20 are not escape taxes, they are deferred?

21 A. Yeah, I apologize for that.

22 Q. And that 1031 exchanges is not a dairy or even
23 agriculture specific?

24 A. But correct.

25 Q. But applies to any land that's used for business?

1 A. I believe that's correct.

2 Q. Our dairymen don't escape taxes, we defer them.

3 A. I'll accept that.

4 Q. Page 26 of your testimony, and I was not here for the
5 reading of this testimony, but I believe you were reading this
6 portion on Monday, and I did not, was not able to come until
7 Tuesday. But I did notice that there was a line about
8 two-thirds down that I have been told was crossed in the --
9 crossed out in the official copy, but that is nonetheless in
10 the copy that I had, which is the sentence starting with
11 "however," do you see that sentence? "However, this issue of
12 manufacturing costs," on page 26?

13 A. Just hold on a minute while I look for it. Right.

14 Q. So "however, this issue of manufacturing class," do you
15 see that sentence?

16 A. I do. So that should read, "However, this issue of
17 manufacturing class prices being at levels that were not market
18 clearing has been a concern."

19 Q. And there was additional language in that sentence that
20 was crossed out. Do you recall?

21 A. Yeah, I do.

22 Q. Specifically a phrase that says, "it's worth pondering
23 why the Orders established regulated minimum prices for
24 manufacturing classes at all." Is there a reason that was
25 crossed out of the testimony?

1 A. That's not part of my testimony, that's why it was
2 crossed out.

3 Q. It is part of the -- I mean, it was part of the written
4 exhibit originally, and has been crossed out?

5 A. It was erroneously a patch of text out of context that
6 was, during some sort of cutting and pasting, deposited there,
7 so it was not part of the testimony.

8 Q. I'll leave it at that.

9 And page 19, and I believe this is my last question.
10 Page 19 of the written testimony.

11 A. Okay.

12 Q. And about halfway down the page, so this would be the
13 bottom half of the first full paragraph, starting with "during
14 my time," do you see that sentence?

15 A. I do.

16 Q. All right. And I'll go ahead and read it. "During my
17 time at Dairy Institute, I have observed that California
18 Cooperatives' reliance on the national pricing grid has
19 generally been limited to those situations where adopting an
20 FMMO regulated price level would have resulted in either a
21 higher price than under the California State Order. The
22 Cooperatives -- "

23 JUDGE CLIFTON: Now, you inserted a word either, which
24 wasn't there. But, go ahead, you may get to your question.

25 MR. VANDENHEUVEL: I should have Bill read it. That might

1 be better, because you recognize your own writing. So if you
2 could read those two sentences.

3 DR. SCHIEK: During my time at Dairy Institute, I have
4 observed that the California Cooperatives' reliance on the
5 national pricing, national dairy pricing grid has generally
6 been limited to those situations where adopting an FMMO
7 regulated price level would have resulted in a higher price
8 than under the California State Order. The Cooperatives have
9 had little interest in advocating per price reductions, except
10 as it pertains to the prices for classes of products that they
11 produce in their own plants.

12 BY MR. VANDENHEUVEL:

13 Q. Just for clarification in the record, are you aware of
14 anytime in recent history, recent being since 2000, that the
15 Class III or Class IV, I mean, I'm sorry, Class 4a or 4b price,
16 which is the majority of the milk sold in California, has been
17 at prices, has had regulated prices above the Federal Order
18 Class III or IV prices?

19 A. There may have been times, I don't know, for a month or
20 two, but generally they have been below Federal Class III and
21 Federal Class IV formulas.

22 Q. So when looking at annual averages, it would not
23 surprise you for me to say that I have done the look up and
24 found that those California 4a prices have been below Federal
25 Order Class IV prices for the entire period of 2000 on, and

1 California Class 4b prices have been below Federal Order
2 Class III prices during that time?

3 A. That would not surprise me.

4 Q. That's all I have, thank you.

5 JUDGE CLIFTON: Who else has questions for Dr. Schiek?
6 Mr. Beshore?

7 CROSS-EXAMINATION

8 BY MR. BESHORE:

9 Q. Two follow up questions -- Marvin Beshore -- with
10 response to a couple of questions from Mr. Vandenheuvel.

11 You cited, Dr. Schiek, the concern, competitive concern
12 I think you called it, with the price of milk being sold for
13 manufacturing purposes when it is transported out-of-state. Do
14 you recall that?

15 A. I do.

16 Q. Okay. So I just want to make sure I understood it. So
17 it is your testimony then, that the price being paid at that
18 out-of-state plant is a relevant factor, a competitive concern
19 I think you said, for plants in California?

20 A. I think what I noted was that if they are obtaining
21 that milk more cheaply than they could otherwise attain those
22 additional supplies, then it's competitive concern.

23 Q. Because those out-of-state plants and California plants
24 compete in the national market and manufacture dairy products,
25 correct?

1 A. They do. They do.

2 Q. And if those out-of-state plants are routinely paying
3 prices significantly higher than plants in California, wouldn't
4 that be a competitive concern, also?

5 A. Yeah, it could be. Also, if those plants are closer in
6 the market, then they may be able to pay more and still be
7 competitive.

8 Q. Okay. So one other -- one other question. I have been
9 pondering what seems to be sort of a mantra of policy here,
10 that you have made the statement in your, in response to
11 Mr. Vandeneuvel, and it is in your testimony. Product
12 market's clear nationally, milk markets clear locally.

13 Did I restate that correctly?

14 A. I believe so.

15 Q. Okay. And has -- is that something that's about
16 concept, a principle that you have picked up from somewhere
17 else or is that new to this proceeding?

18 A. It's a more of an observation, a conceptual observation
19 of how markets appear to work. And I think I had said in my
20 testimony, you generally don't see milk moving to some sort of
21 central clearing point, market clearing point because the cost
22 of transporting it. So usually you have it cleared in the
23 region that it is produced.

24 Q. Well, products, national products don't move, the dairy
25 product markets don't move to a central clearing point and

1 clear either, correct?

2 A. Not all the product, but the CME kind of provides a
3 market of last resort clearing point for most products, on most
4 products, I should say.

5 Q. That's a reference point, it's not actually a, for much
6 volume, it is not actually a transaction point, right? For
7 large volumes?

8 A. I think it's a transaction point for marginal volumes,
9 for volumes at the margin, so -- yeah.

10 Q. In terms of the national market in dairy products, the
11 AMS Product Survey Prices and the DPSR -- did I get it right?

12 A. The DPSR, very good.

13 Q. That accurately reflects, on a weighted average basis,
14 the national market for this product, does it not?

15 A. It reflects the weighted average price of those
16 products.

17 Q. In the national market?

18 A. I think it's, again, a composite of regional prices.
19 So if there a, it there's a national price, it will be a
20 composite weighted average of lower prices and higher prices.

21 Q. And that's what that price is?

22 A. It's the, it is a weighted average price, correct.

23 Q. For the national market for those dairy products?

24 A. For the, for all the products depending on where they
25 are sold. So if you want to call that national market, it is

1 the national market. It is the national market.

2 Q. So with respect to milk markets clear locally, is there
3 a, how do you define the local market? Are you saying that
4 there's some fixed geographic mileage factor that defines
5 whatever you are talking about there?

6 A. No, I don't think I have a fixed mileage factor in
7 line. You know, it's -- it's a bit of a conceptual idea that,
8 okay, you have got a production area and you would like that
9 market to be able to clear within the same general area, as
10 opposed to having it be shipped out of the area. So, for
11 example, within California might be the relevant data, or if
12 there were some plants that were closely aligned with the milk
13 supply that were just outside the borders of California, that
14 might be a local group, too. But sending it 600, 700 miles
15 would probably not be a local clearing.

16 Q. You would agree, would you not, that any such
17 conceptual localized clearing is not, and never has been, a
18 principle adopted in the Federal Milk Order program?

19 A. That's a good question. I don't know that it has in
20 terms of decisions where it's been mentioned that way. I
21 don't -- I'm not aware of any.

22 Q. But it's not the -- it's not the policy that at present
23 as reflected in, for instance, the Reform Decision, decisions
24 relating to national class price formulas?

25 A. I don't know. When I read that Reform Decision

1 particularly as it talks about market clearing, it's talking
2 about milk, and I would interpret that to mean the local
3 markets for milk as well. Milk has to clear.

4 Q. Right. But there was no geographically defined scope.
5 In fact, it was --

6 A. If --

7 Q. -- there were national uniform national prices in that
8 decision, in that policy?

9 A. Currently in that decision, yes, uniform national
10 prices.

11 Q. And in the national policy for those prices?

12 A. I would say that's probably accurate.

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

14 CROSS-EXAMINATION

15 BY MR. RICHMOND:

16 Q. Bill Richmond, USDA.

17 Thank you, Dr. Schiek. Your testimony has been
18 wonderful and very helpful to us. I think it is Exhibits 79
19 and 80 have been very well put together. We really appreciate
20 the history of California program, so we just want to make sure
21 you understood that.

22 You described the membership of the Dairy Institute as
23 representing around 70 percent of fluid milk sales, and --

24 A. 65, I think is what's been referenced.

25 Q. Between 65 and 70.

1 A. Okay.

2 Q. Would you be able to characterize perhaps the remainder
3 of fluid milk sales in the state that maybe do not represent
4 your membership?

5 A. Yes, some of them are producer-handlers.

6 Q. Okay.

7 A. Okay? That would probably be the largest share. There
8 are a couple of medium to large size processors that aren't
9 members and potentially very small processors there.

10 JUDGE CLIFTON: Your voice dropped out, dropped off.
11 Medium to large size what?

12 DR. SCHIEK: Medium to large size Class I processors that
13 are not members, and some smaller, you know, much smaller fluid
14 processors that aren't members.

15 BY MR. RICHMOND:

16 Q. Thank you. And I take it that those medium other
17 medium to large size fluid milk processors, besides that aren't
18 represented by the producer-handler group, will not be
19 appearing in support or even in opposition to the Dairy
20 Institute proposal, to your knowledge?

21 A. There may be one or two.

22 Q. Okay. Would you characterize a portion of the
23 Cooperative proposal that the Dairy Institute was the most
24 opposed to, just to help us understand? Would you be able to
25 do that?

1 A. Yeah, I would. I would say clearly mandatory pooling
2 is a problem from our perspective. It's a level of regulation
3 that other Federal Orders don't have, an intensity, I guess, of
4 regulation. I don't quite know how to express what I mean
5 there. But it kind of wraps regulatory arms around the entire
6 milk supply in a way that doesn't happen in other Federal
7 Orders. And I would say, again, we are concerned about the
8 manufacturing prices, price levels for Class III and Class IV.

9 Q. So adoption of a mandatory or inclusive type pooling
10 scheme would, in your opinion, be, in fact, disorderly?

11 A. I believe so, yes.

12 Q. To the extent that there are some unique provisions
13 that exist here in California, inclusive pooling, quota, and
14 the like, would you agree that if a Federal Order was, in fact,
15 recommended to be adopted in California, that it should, or
16 could perhaps be unique or different than existing
17 Federal Orders that are currently in place to recognize those,
18 that uniqueness, if you will?

19 A. I do believe that there could be some modifications. I
20 don't believe that something like inclusive pooling, which is
21 so fundamentally different from the rest of the orders, in my
22 view, would be appropriate.

23 Q. Okay. I think that's all we have. Appreciate it.
24 Thank you.

25 JUDGE CLIFTON: Is there any follow up for the last

1 questions for Dr. Schiek? Is there any redirect?

2 REDIRECT EXAMINATION

3 BY MR. ENGLISH:

4 Q. I really only have one set of questions, and it is on
5 one issue only, so that's the only issue I'm raising. You had
6 a discussion with Mr. Vandenheuvel about Idaho and Washington.

7 A. Correct.

8 Q. And he said, "Well, look, Idaho and Washington share a
9 border." Are you aware where the relative milk productions in
10 those two states are?

11 A. My understanding is the Idaho production is, most of it
12 is in the Magic Valley, which is the area kind of in the Snake
13 River Plain around Twin Falls, that general area.

14 Q. So much closer to Nevada and Utah than Washington.
15 Yes?

16 A. Yes, really definitely closer to Nevada.

17 And the Washington areas, I, again, I'm not an expert,
18 but I believe it is the Yakima Valley area and West. Right?
19 There's Wacum County up near the Canadian border, there's still
20 some dairies there that are a little more traditional, smaller
21 size dairies.

22 Q. Having just driven across the United States, would you
23 agree with me that's at least a day's drive?

24 A. Yes.

25 Q. So you weren't necessarily agreeing that this entire

1 difference is not explainable?

2 A. Correct.

3 Q. Are you aware that Idaho markets itself as an extremely
4 business-friendly jurisdiction with very few regulations?

5 A. I am aware that they do that, yes.

6 Q. And would it be fair to say that, you know, given my
7 law firm is based in Seattle, the State of Washington doesn't
8 quite meet that definition? They have a lot more regulations?

9 A. I would accept that, yeah. I don't have particular
10 knowledge of that.

11 Q. And for Idaho, Idaho grows a lot of alfalfa?

12 A. I believe they do grow --

13 Q. So there could be alfalfa, there could be feed cost
14 difference --

15 A. There could be --

16 Q. -- between Nevada --

17 A. Sorry, talking over you.

18 JUDGE CLIFTON: You think you two would get good at this.

19 MR. ENGLISH: I think we're in a hurry.

20 BY MR. ENGLISH:

21 Q. But you would agree there could be a feed cost element
22 here that would be explainable by Idaho's growth of alfalfa in
23 terms of the state?

24 A. There could be.

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

1 JUDGE CLIFTON: All right. Dr. Schiek, thank you. And I
2 echo my appreciation for your contribution. It is very, very
3 helpful to have you Economists opine, in that respect, both you
4 and Mr. Hollon have given us information that we may not
5 understand yet, but it will be very helpful as all the analysis
6 is done. Thank you. What shall we do next?

7 MR. ENGLISH: I am not going to stand in the way of
8 everybody else. I think it is time for lunch.

9 JUDGE CLIFTON: All right. And if it weren't for everybody
10 else, you would keep going, I know.

11 MR. ENGLISH: No, I think I would want to go, too.

12 JUDGE CLIFTON: All right. We'll take an hour and 15
13 minutes, so please be back at 2:00, ready to go.

14 MR. ENGLISH: Well, okay. I need to talk to my witnesses,
15 but I believe it will be Mr. Suever. That's my intention, but
16 I do need to talk to my witnesses, because frankly, we went
17 longer than I thought we would. So my intention is to start
18 with Mr. Suever.

19 JUDGE CLIFTON: And Mr. Suever is talking about what?

20 MR. ENGLISH: Orderly marketing.

21 JUDGE CLIFTON: Orderly marketing?

22 MR. ENGLISH: We're back to the agenda I discussed with the
23 witnesses. ESL was out of order, but now we're back to the
24 testimony I want to discuss.

25 (Whereupon, the lunch recess was taken.)

1 THURSDAY, OCTOBER 22, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: We're back on record now at three minutes
3 past 2:00. 2:03. Mr. English?

4 MR. ENGLISH: Actually, Ms. Vulin.

5 MS. VULIN: Good afternoon, we would like to ask Mr. Suever
6 back to the stand, please.

7 JUDGE CLIFTON: Thank you. And Ms. Vulin, if you will say
8 your name.

9 MS. VULIN: Ashley Vulin. And I have here an Exhibit, I
10 think, 90.

11 JUDGE CLIFTON: Thank you. I'm marking this document which
12 is titled Testimony of Mike Suever, HP Hood, LLC as Exhibit 90.

13 (Thereafter, Exhibit 90 was marked
14 for identification.)

15 JUDGE CLIFTON: Now, please raise your hand if you need a
16 copy of Exhibit 90. They appear to be distributed.

17 Mr. Suever, you remain sworn.

18 MR. SUEVER: Yes, your Honor.

19 JUDGE CLIFTON: Would you please state and spell your name?

20 MR. SUEVER: Michael Suever, S-U-E-V-E-R.

21 JUDGE CLIFTON: Ms. Vulin, you may begin.

22 DIRECT EXAMINATION

23 BY MS. VULIN:

24 Q. Thank you, your Honor.

25 Mr. Suever, before we begin, just for anyone listening

1 or who might not have been here yesterday, can you remind us
2 where you work and what your job title is?

3 A. I am the Senior Vice President at HP Hood, LLC.

4 Q. And what subject are you going to be testifying about
5 today?

6 A. The topic of today's testimony relates to disorderly
7 marketing.

8 Q. Thank you. And you have a written exhibit here that we
9 have marked Exhibit 90?

10 A. I do.

11 Q. I will ask that you read that into -- into the record,
12 please.

13 A. I will.

14 JUDGE CLIFTON: And just to remind you, speak into the
15 microphone, not directly to either Ms. Vulin or me.

16 MR. SUEVER: Yes, your Honor.

17 I must start by saying that I was surprised when USDA
18 announced that it was willing to consider the implementation of
19 a Federal Milk Marketing Order covering California. Over the
20 many years that I have been involved in milk-related regulatory
21 affairs, California's milk regulations were often looked to for
22 ideas of how existing Federal Milk Orders could be brought up
23 to date and become more flexible given the ever-changing
24 domestic/international market conditions. In many
25 conversations and panel discussions, California was often cited

1 as the "gold standard" of how more efficient program could be
2 operated.

3 It is hard to for me to understand, with such
4 highly-evolved and frequently updated State milk regulatory
5 program in place, that anyone could make a legitimate argument
6 that "disorderly milk marketing" conditions exist. I believe
7 that for USDA to recommend that a Federal Milk Market Order is
8 warranted in California, that "disorderly marketing" conditions
9 must be proved by the proponents. In preparation for this
10 hearing, I spent time trying to see if I could get a clear
11 definition of what constituted "disorderly marketing"
12 conditions in past proceedings. I was not able to find a
13 singular definition to relate to, but was able to find several
14 citations that made reference to "disorderly marketing"
15 conditions. One such --

16 JUDGE CLIFTON: Let me stop you, Mr. Suever. Several times
17 what is printed is "disorderly market" and you are reading it
18 as "disorderly marketing." I find them interchangeable in this
19 context. Do you agree?

20 MR. SUEVER: I do, your Honor.

21 JUDGE CLIFTON: All right. Thank you. Picking up with one
22 such reference.

23 MR. SUEVER: One such reference noted that "disorderly
24 market" conditions existed when insufficient raw milk was
25 available to supply fluid milk processing plants.

1 BY MS. VULIN:

2 Q. Mr. Suever, can you tell us where that reference came
3 from?

4 A. Yes. When doing my research, it involved a hearing
5 that related to the Southeast Order hearings looking at trying
6 to bring milk into a deficit market in the Southeast.

7 Q. Do you know what year that was?

8 A. I do not.

9 Q. You may continue.

10 A. Since Hood's acquisition of the former Crystal
11 Creameries plant in Sacramento seven years ago, we have not had
12 any difficulty or concerns about securing sufficient raw milk
13 to produce our varied dairy products.

14 Q. Now, can I ask you a little bit about this Crystal
15 Creameries plant? Currently does the milk from this plant come
16 from California?

17 A. It does, yes.

18 Q. Does it entirely come from California?

19 A. At this time, it does, yes.

20 Q. And you said "varied dairy products", can you give us
21 kind of a better sense of what types of products those are?

22 A. Yes, at that facility it is an ESL/aseptic plant and we
23 produce a number of liquid dairy products, both Class I and
24 Class II.

25 Q. And you have been able to find sufficient milk supplies

1 for both of those classes of products?

2 A. Yes, ma'am.

3 Q. Thank you, you may continue.

4 A. Another notation in prior proceedings mentioned
5 "disorderly marketing" in connection with raw milk needing to
6 be moved long distances (without sufficient compensation) to
7 supply a market, and also the need to bring supplemental
8 supplies into a market to meet fluid processor needs.

9 Q. And can you tell us what proceeding this was?

10 A. Yes, this was the same proceeding that I referred to
11 earlier, the Southeast hearing that took place.

12 Q. Thank you. You may continue.

13 A. The other notation would have been during Order
14 consolidation where much conversation took place about Class I
15 differentials, and differentials important about how to
16 compensate and move milk from reserve supply areas to fluid
17 processing plants.

18 Q. And related to sufficient access to raw milk being that
19 these differentials would help facilitate the efficient
20 movement of milk to areas where it's needed?

21 A. That's correct.

22 Q. Thank you. You may continue. You were right there,
23 during the last seven years.

24 A. During the last seven years, while operating our plant
25 in California, I am not aware of raw milk needing to move great

1 distances without proper compensation, nor do I think that raw
2 milk is routinely being brought into California because of
3 insufficient supplies to meet fluid milk processor demand. I
4 believe that the principle charter for USDA's milk marketing
5 programs to be promulgated to benefit not only the milk
6 producers, but also equal weight is given to concerns of fluid
7 milk consuming public. I do not believe that the proposals,
8 I'm sorry, that the proponents of Proposal Number 1 has the
9 consuming public in mind.

10 The USDA study provided in evidence at this hearing,
11 demonstrates that there will likely be an adverse impact on
12 existing Federal Order pool producer blend prices if Proposal 1
13 is enacted.

14 Q. And by adverse impact, you mean their prices would go
15 down?

16 A. According to that evidence that was presented, a number
17 of blend prices in several Federal Orders in the United States,
18 would see an adverse impact or lower prices based on that
19 study.

20 If higher prices in California leads to supposedly less
21 disorderly marketing in California, I would ask if the
22 resulting lower prices to most of the existing pooled Federal
23 Order producers could lead to disorderly marketing conditions
24 in those markets. USDA's study does not go far enough to make
25 a determination of what unintended consequences could be

1 created in the existing Federal marketing areas.

2 Q. Federal Order marketing areas?

3 A. I'm sorry, Federal Order marketing areas. Thank you.

4 Q. Thank you.

5 A. I suggest that this research should be conducted before
6 any recommended decision from this hearing be brought forth
7 from USDA.

8 Q. Mr. Suever, I'm going to stop you for a moment. You
9 said you have looked at the economic studies done by the USDA
10 for these proceedings to evaluate the impacts that the various
11 proposals would have, both within California and other Federal
12 Milk Marketing Orders?

13 A. Yes.

14 Q. And but you think here there are some either factors in
15 those studies or ultimate conclusions that haven't yet been
16 explored?

17 A. What I'm trying to point out here is that, to my
18 knowledge, no one has done any work to determine whether there
19 are adverse consequences by virtue of California's
20 implementation of an Order based on Proposal 1, and the direct
21 impact to producers in other pooled markets.

22 I think there likely could be impact to where milk is
23 both produced in those other markets going forward based on the
24 impact that was denoted in the study, but it also could have
25 impact and bearing on where processors are located today.

1 Q. So the study limited just to the prices that farmers in
2 other Federal Orders would receive, doesn't quite take into
3 account enough of the complexities of the location of plants
4 and the movement of milk to really understand the impact that
5 Proposal Number 1 could have?

6 A. That's correct.

7 Q. Thank you. You may continue.

8 A. Another potential consequence of Proposal 1 is that
9 dairy manufacturing plants may find that they can't keep pace
10 with international market dynamics. California is ever so
11 dependent on the movement of dairy products into the
12 international marketplace. Manufactured milk plants could
13 experience dramatic growth and finished inventories and
14 struggle to move these products into international market. It
15 is true that CWT (Cooperatives Working Together) could help
16 with this issue, but the level of producer contributions to
17 this fund would likely need to be dramatically increased.

18 Q. Can I stop you there? Can you tell me what the
19 Cooperatives Working Together is?

20 A. Well, the Cooperatives Working Together program is a
21 voluntary program amongst dairy farmers who contribute on a
22 monthly basis via their payroll checks to the CWT fund. At
23 this point the CWT (Cooperatives Working Together) program
24 provides dollars to support export market activity manufactured
25 dairy products at their discretion.

1 Q. And this is to facilitate the sale of milk products
2 into markets outside of the United States?

3 A. That's their stated goal, yes.

4 Q. Thank you. You may continue on the next page.

5 A. I wonder how these, I'm sorry, I wonder how receptive
6 pooled Federal Order producers in the rest of the country will
7 be to such a request after their blend prices were reduced by
8 the implementation of Proposal Number 1.

9 Q. So I'm going to stop you again now that we finished
10 that paragraph, because we haven't really yet, in this hearing,
11 fully explored the issue of dairy product exports. And I know
12 that you had a couple additional thoughts on kind of the export
13 market and how you think these proposals might affect that, so
14 I'd ask that you share those now.

15 A. Sure. In preparation for this hearing I looked at the
16 most recent data that I could find, website California
17 Advisory, Milk Advisory Board, CDFA's 2013 data release
18 indicated that 40 percent of the total U.S. exports of dairy
19 products are coming from California. And my concern is that
20 the impact of pricing changes that are proposed in Proposal
21 Number 1 could put processors in a different economic situation
22 and dramatically impact their ability to access those
23 international markets.

24 Q. So it's kind of similar to the concern that you voiced
25 previously, there are these kind of additional factors or

1 issues, such as how the proposals may affect the export market
2 that might not have been considered yet in this proceeding, but
3 that could have a very negative affect on farmers in California
4 and elsewhere?

5 A. Correct.

6 Q. Thank you. You may continue.

7 A. Proposal 1 seems to rely heavily on the need to pool
8 all milk in California. This type of requirement is not found
9 in existing Federal Orders. In fact, it seems that the
10 entirety of Proposal 1 hinges on mandatory pooling. This need
11 for mandatory pooling exposes just how precarious Proposal 1 is
12 fundamentally, and for this reason alone, USDA should not rule
13 favorably on Proposal 1. We have seen in many of the existing
14 Federal Orders that the ability to depool at times by both
15 Cooperatives and processors, has been one of the principle
16 reasons that orderly marketing has been maintained in those
17 orders.

18 If USDA determines that a Federal Order is required in
19 California, then HP Hood, LLC, would support Proposal Number 2.
20 We feel that this proposal is the least disruptive to the
21 overall marketplace and best meets the needs of the entire
22 industry, along with consumers.

23 Q. Thank you, Mr. Suever. Is there anything else that you
24 would like to add in addition to your statement?

25 A. No, thank you.

1 Q. No further questions. Actually, sorry, your Honor, I
2 would like to move for admission of Exhibit 90.

3 JUDGE CLIFTON: Does anyone wish to question Mr. Suever
4 before determining whether you have any objection? There is no
5 one. Is there any objection to the admission into evidence of
6 Exhibit 90? There is none. Exhibit 90 is admitted into
7 evidence.

8 MS. VULIN: Thank you, your Honor.

9 (Thereafter, Exhibit 90 was
10 received into evidence.)

11 JUDGE CLIFTON: Who will ask the first cross-examination
12 questions of Mr. Suever?

13 MS. OLIVER THOMPSON: Good afternoon, Mr. Suever.

14 MR. SUEVER: Good afternoon.

15 CROSS-EXAMINATION

16 BY MS. OLIVER THOMPSON:

17 Q. Megan Oliver Thompson.

18 HP Hood has just the one plant in California, correct?

19 A. That is correct.

20 Q. That's the formerly known as Crystal Creameries plant
21 in Sacramento?

22 A. That's correct.

23 Q. And I believe you testified yesterday that that plant
24 produces ESL product only?

25 A. ESL and aseptic.

1 Q. And aseptic, sorry. Now, the advantage of the ESL and
2 aseptic products is that they can be shipped longer distances
3 than HTST milk; is that right?

4 A. Are we having cross-examination on today's testimony or
5 yesterday's testimony?

6 MR. BESHORE: Your Honor?

7 JUDGE CLIFTON: Are you unable to answer the question,
8 Mr. Suever?

9 MR. SUEVER: Actually, quite frankly, I didn't pay
10 attention when she wandered off the path of where we were at
11 today.

12 I don't have yesterday's testimony before me and I
13 wasn't prepared to address questions about yesterday's
14 testimony.

15 JUDGE CLIFTON: Let's try the question again,
16 Ms. Oliver Thompson, just ask it the way you did and we'll see
17 if Mr. Suever can answer it.

18 MS. OLIVER THOMPSON: Okay. And I'm certainly not
19 intending to cross-examine on yesterday's testimony, this is
20 related to today's testimony, and it is a question about the
21 products that your, that's being produced at the California
22 HP Hood plant, which is, that product has the advantage of
23 being able to be shipped longer distances than other, you know,
24 HTST milk products; is that right?

25 MR. SUEVER: It has additional shelf life.

1 BY MS. OLIVER THOMPSON:

2 Q. Okay. And does -- does HP Hood ship its product out of
3 California?

4 A. Some of it, yes.

5 Q. Okay. Does it ship some of its product
6 internationally?

7 A. Yes, we do.

8 Q. Under the California regulation, for products you ship
9 outside of California, you're paying a lower class price than
10 you would for products shipped within California; is that
11 right?

12 A. That's correct.

13 Q. And for products shipped outside of the United States,
14 you are paying an even lower class price; is that correct?

15 A. Yes.

16 Q. Okay. And if a Federal Order were implemented here in
17 California, you would not have those same benefits of paying
18 lower class prices for products shipped outside of California,
19 would you?

20 A. I would make the distinction between outside of
21 California to a regulated area versus internationally --
22 what -- maybe you could clarify your question.

23 Q. Okay. Well, isn't it true that under a Federal Order
24 you would pay Class I prices for the Class I ESL products; is
25 that right?

1 A. Yes.

2 Q. Okay. Regardless of where they are shipped?

3 A. Yes.

4 Q. Okay. When HP Hood acquired the Crystal Creameries
5 plant in 2008, it terminated about 22 producer contracts; is
6 that right?

7 A. Yes.

8 Q. Effectively leaving those 22 producers without a home
9 for their milk?

10 A. We closed the facility so we could reopen it in its new
11 configuration as an aseptic/ESL operation. So during that
12 period of reconfiguration, we were not able to take milk in
13 because we were not operating effectively.

14 Q. Were you -- were you able to take on any of those
15 terminated producers after you reopened the facility?

16 A. We did.

17 Q. You did?

18 A. We did.

19 Q. How many of the 22?

20 A. Five.

21 Q. Would that situation that occurred in 2008 through the
22 acquisition of that plant, in your mind, cause any disorder in
23 the market?

24 A. Well, we sold the conventional business that was being
25 operated at that plant, and so it went to another processor in

1 California and they continued to produce the products, so the
2 product continued, the Class I product continued to be made in
3 California, in fact, just down the road from the Sacramento
4 facility. So I'm not sure that disorderly marketing conditions
5 existed.

6 Q. Do you know whether all of the 22 producer contracts
7 that were terminated were taken on by that other facility?

8 A. I don't know.

9 Q. You, in your testimony today, provided your definitions
10 of the term disorderly, and you based those definitions on your
11 review of other Federal Order hearings. But the term
12 "disorderly" is not used anywhere in the Federal Order
13 language; is that right?

14 A. In fact, I stated that in my direct that I was not
15 successful in finding that terminology. There is terminology
16 related to "orderly" but not "disorderly." I readily admitted
17 that in my direct.

18 JUDGE CLIFTON: Mr. Suever, just so you know, a person is
19 allowed to ask the same question that you have been asked on
20 direct, so don't feel that you are being put upon by answering
21 it again.

22 MR. SUEVER: Yes, your Honor.

23 JUDGE CLIFTON: Okay.

24 BY MS. OLIVER THOMPSON:

25 Q. Okay. Mr. Suever, do you know who the largest dairy

1 product exporter is in California?

2 A. I do not.

3 Q. Would it surprise you to know that it's
4 California Dairies?

5 A. I don't know.

6 Q. Okay. And you obviously know that California Dairies
7 supports, well, it's proposing Proposal Number 1?

8 A. Yes.

9 Q. Okay. In your testimony, at the top of page 2, you say
10 that, "Nor do I think that raw milk is routinely being brought
11 into California because of insufficient supplies to meet fluid
12 process or demand."

13 But you are aware that bulk milk is imported into
14 California regularly, correct?

15 A. I am aware of it.

16 Q. Okay. In fact, Dr. Schiek testified to that at
17 different points in his testimony.

18 A. Earlier today, yes.

19 Q. You testified about the organization called CWT,
20 Cooperatives Working Together. Do Dairy Institute members
21 contribute to or benefit from that CWT, to your knowledge?

22 A. Not to my knowledge.

23 Q. May I have a moment, your Honor?

24 JUDGE CLIFTON: Certainly.

25 MS. OLIVER THOMPSON: That's all I have, thank you.

1 JUDGE CLIFTON: Ms. Vulin? Okay. Further
2 cross-examination?

3 CROSS-EXAMINATION

4 BY MS. HANCOCK:

5 Q. Nicole Hancock.

6 Mr. Suever, you have on Exhibit 90, your prepared
7 statement, the last sentence from the first paragraph says that
8 "California was often cited at the "gold standard" of how more
9 efficient programs could be operated."

10 Can you help me understand what you mean by that?

11 A. Yes. Specifically, the frequency of having hearings
12 and the ability to turn around a hearing at a fairly rapid
13 pace.

14 Q. So when you say the "gold standard" that's referring to
15 just the mechanics of the hearing or are you referring to the
16 overall State Order system?

17 A. I was, in that particular reference, talking about the
18 ability to turn around a hearing quickly to deal with market
19 dynamics.

20 Q. Okay. And have you participated in other hearings in
21 the California State Order system?

22 A. I have not.

23 Q. Your next paragraph starts off with, "It's hard for you
24 to understand with such a highly evolved and frequently updated
25 state milk regulatory program in place, that anyone could make

1 a legitimate argument that "disorderly milk marketing"
2 conditions exist."

3 What do you mean by "highly evolved"?

4 A. The California Order has been in place for many
5 decades. It, as I indicated, is often updated and adjusted
6 based on the requests from the marketplace. And so, therefore,
7 it has shown the ability to adapt to, again, as I said, the
8 ever-changing market.

9 Q. So am I understanding it correctly that because
10 California has a mechanism in place but allows these hearings
11 to take place pretty, pretty easily or frequently and
12 efficiently, that that's, in your view, allowed the California
13 State Order system to respond to any issues that need to be
14 addressed?

15 A. Correct.

16 Q. Okay. So is it your view that the overall structure of
17 the California State Order system is, therefore, fine the way
18 it is?

19 A. I wasn't trying to talk about the overall structure, I
20 was specifically talking about their ability to deal with
21 market dynamics quickly.

22 Q. Okay. So maybe I just misunderstood. So I thought
23 that you were talking about disorderly marketing as a whole,
24 for the State Order system in California; is that not correct?

25 A. Yes.

1 Q. I think I didn't ask that question correctly. Yes,
2 that's not correct? Yes, I'm incorrect; is that right?

3 A. Why don't we start again?

4 Q. Yeah. So am I correct, am I correct, then, that what
5 you are just talking about here in your prepared statement,
6 Exhibit 90, is just the efficiencies by which the State system
7 can respond to the market conditions?

8 A. Yes.

9 Q. And you are not talking about any, you are not
10 providing an opinion about anything substantively about how the
11 is system is operating in California?

12 A. I wouldn't characterize it that way, that finitely.

13 Q. Well, that's what I'm trying to dig into. Beyond
14 talking about, beyond giving us your opinion about whether or
15 not hearings can be held to address market conditions, are you
16 providing an opinion in Exhibit 90 that pertains to any
17 specific substantive areas of how the system is currently
18 operating?

19 A. It wasn't my intention to try to drill down the
20 specifics, so I didn't do that.

21 Q. Okay. I just want to be clear about that. I thought
22 you were. So you were talking more about just the hearings and
23 the ability to respond; is that right?

24 A. Yes, ma'am.

25 Q. Okay. Thank you.

1 JUDGE CLIFTON: Who next has questions for Mr. Suever on
2 this topic?

3 CROSS-EXAMINATION

4 BY MR. ENGLISH:

5 Q. Chip English.

6 I just want the record to be clear with respect to the
7 regulatory treatment of your facility when it sells outside of
8 California, and I think there might have been some questions
9 that suggested that things don't work the way they do.

10 When your facility has any sales outside of California,
11 say into Arizona, which is a Federal Order, you are subject to
12 a partially regulated provisions under Section 76(c), correct?

13 A. We are, and report same.

14 Q. And under that provision, for sales into Arizona, you
15 basically compensate the Arizona pool for the difference
16 between the Arizona price at your plant location, less the
17 California regulated price, correct?

18 A. We do, yes.

19 Q. Okay. And that would be true of sales into any Federal
20 Order territory, correct?

21 A. Yes.

22 Q. If you pay premiums, any premiums for your milk, are
23 those premiums considered in calculating the payment into, for
24 instance, the Arizona pool, under 76(c)?

25 A. They are not.

1 Q. Okay. If your plant, instead, had been located in
2 Nevada, and therefore, not part of the Federal Order territory,
3 and not part of a State Order with market-wide returns, and
4 sold into Arizona, you would be eligible to use the Wichita
5 option, correct?

6 A. We would.

7 Q. Which would take into consideration the total amount
8 actually paid to your farmers, correct?

9 A. Yes.

10 Q. Including premiums, correct?

11 A. Yes.

12 Q. Thank you.

13 JUDGE CLIFTON: What other cross-examination is there
14 for Mr. Suever?

15 CROSS-EXAMINATION

16 BY MR. VANDENHEUVEL:

17 Q. Rob Vandenheuvel, Milk Producers Council.

18 Good afternoon.

19 A. Good afternoon.

20 Q. Following up on the questions and dialogue you had with
21 Ms. Hancock on the "gold standard", are you aware of whether
22 those discussions or those characterizations of the California
23 system have come from producers or not?

24 A. In some cases, yes, there were panels of both
25 processors and producers.

1 Q. And the characterization of "gold standard" came from
2 the producer witnesses on those panels?

3 A. That term was used on the panel, I'm not sure who
4 specifically referenced it.

5 Q. Okay. Thank you. And in exploring that a little bit
6 more with Ms. Hancock, you mentioned the pace at which changes
7 can be made to the system through the hearing process in
8 California. Would you agree that notwithstanding these
9 particular hearings, just in general, a quick decision doesn't
10 always mean a good decision?

11 A. That's -- sure.

12 Q. A good decision, of course, being a subjective term,
13 but there are parties within any discussion that a quick
14 decision doesn't necessarily mean a good decision?

15 A. Given the subjectivity of that, so I was struggling
16 with an answer.

17 Q. I understand. You had some testimony in Exhibit 90
18 discussing the impact that a California Federal Order or the
19 promulgation of a California Federal Order could have on other
20 Federal Orders, the other ten Federal Orders operating within
21 the United States, and particularly with the producer blend
22 prices that are paid within those other ten Federal Orders. Do
23 you recall that testimony?

24 A. I do.

25 Q. If we take that, and just so that we're clearly talking

1 about the same thing, this was discussed earlier in this
2 hearing, but do you recall or have you been made aware of the
3 discussions that the reason the economic analyses that USDA put
4 together for this hearing, the reason that analyses showed a
5 negative impact on other blend prices around the country is
6 because of an assumed increase in milk production in California
7 as a result of the higher blend prices in California?

8 A. I understood that to be the case.

9 Q. So if we take that idea, whether it is universally
10 accepted or not, if we take that idea to its illogical
11 conclusion, wouldn't the best thing for the other ten orders be
12 for California to go broke and stop producing milk all
13 together? The California dairy industry?

14 A. I don't think that would be good for the dairy industry
15 in the United States whatsoever.

16 Q. But if the logic is that the more California producers,
17 the worse off the other regions are; conversely you would say,
18 the less California producers that produces in milk, the better
19 off the rest the country is, if that logic holds true, wouldn't
20 you say?

21 A. What my testimony indicated was that I felt that
22 additional study was required to understand whether there was
23 unattended consequences by virtue of Proposal 1 in the other
24 orders.

25 Q. You would note though, would you not, that what the

1 Cooperatives have put forth in Proposal Number 1 are regulated
2 minimum prices that are equal to the regulated minimum prices
3 in the other ten orders, not in excess of?

4 A. Yes.

5 Q. On page 2 of your written testimony, Exhibit 90, you
6 have a discussion about international market dynamics,
7 specifically, that manufactured milk plants could experience
8 dramatic growth of finished product inventories and struggle to
9 move these products in the international market. Do you see
10 that in your testimony?

11 A. Yes.

12 Q. Manufacturers, let me say it another way. Is it your
13 testimony by stating that, could I assume that your position,
14 or could I infer from these comments that your position, is
15 that manufacturers who decide to sell their products in an
16 international market that may or may not garner a market price
17 for those products above the prices here domestically -- let me
18 re-word it because this sentence is getting out of control.

19 Is it -- could I infer from this statement that a
20 manufacturer who decides to sell in an international market and
21 is unable to garner a product price that will cover the cost of
22 the milk needed to make that product, is somehow entitled to be
23 able to purchase discounted milk to be able to make that
24 difference?

25 A. What I was trying to point out in my testimony is that

1 in USDA's work, they indicated that a likely outcome of
2 Proposal 1 was additional production in California. By
3 extension, that additional milk production would likely be
4 converted into manufactured products, not Class I. And
5 therefore, inventories were likely to build at a higher cost,
6 and therefore, might struggle when finding a marketplace.

7 Q. So you are not testifying that a manufacturer should be
8 able to go find whatever markets are available at whatever
9 price is available, and have an expectation that the raw milk
10 price will be adjusted accordingly to make that market
11 profitable for them?

12 A. I wasn't testifying in that regard.

13 Q. Finally, on page 3, the last sentence of the first full
14 paragraph, the second to the last paragraph, states, "We have
15 seen in many of the existing Federal Orders that the ability to
16 depool at times by both Cooperatives and processors, have been
17 one of the principle reasons that orderly marketing has been
18 maintained in the orders." Do you see that?

19 A. I do.

20 Q. You are aware that depooling can occur for a multitude
21 of reasons, including -- including a desire to avoid a pool
22 contribution in any particular month?

23 A. Sure.

24 Q. And that depooling does not always mean that the milk
25 was sold below regulated minimum prices?

1 A. It doesn't always mean that. Certainly, in this
2 connotation I had in mind, our recent experiences in the
3 Northeast where we were very heavily burdened with raw milk
4 supplies, and a number of individual, a number of
5 organizations, including co-ops, depooled in order to clear the
6 market.

7 Q. Are you aware of a reliable data set that calculates or
8 attempts to calculate a picture of how much depooled milk is
9 actually receiving or what the price that depooled milk is
10 receiving, whether it is above or below the regulated minimum
11 price?

12 A. I'm sorry, I didn't follow the question.

13 Q. We have some data on how much milk that's eligible to
14 be pooled is actually depooled. We have that data set, it was
15 introduced as an exhibit earlier in this hearing. But that
16 data did not indicate whether the milk that was, that did opt
17 to depool, had paid at least the regulated minimum price based
18 on utilization. Are you aware of any data set that would
19 calculate that, that number?

20 A. I haven't seen it.

21 MR. ENGLISH: I object to the characterization mostly
22 because I think there might be a misunderstanding. I think the
23 exhibits are eligible milk not pooled, which is not necessarily
24 the same thing as milk depooled, because eligible milk not
25 pooled may very well include milk that is never pooled, and

1 therefore not depooled. So I think that the question was
2 assuming documentation that isn't the way they are put
3 together.

4 MR. VANDENHEUVEL: Fair point. I'll concede that point.

5 BY MR. VANDENHEUVEL:

6 Q. In the exhibit we saw of eligible milk not pooled,
7 there was no column showing the price at which that milk was
8 sold. Are you aware of any data set showing what eligible milk
9 not pooled is sold for in the marketplace?

10 A. I haven't seen the data set.

11 Q. So you are not aware of any data set that's available?

12 A. I'm not aware of it.

13 Q. Thank you. That's it.

14 CROSS-EXAMINATION

15 BY MS. REED:

16 Q. Good afternoon, Kristine Reed for Select Milk
17 Producers.

18 I wanted to draw your attention to page 2 of your
19 testimony. In the first full paragraph on that page you have a
20 statement or two concerning the interests of the consuming
21 public. Could you expand on that a little bit, and
22 particularly the reasons you have behind your statement that
23 you believe the proponents of Proposal Number 1 fails to bear
24 in mind the consumers?

25 A. When I was doing my research looking into trying to

1 find a definition for disorderly marketing, which I was
2 unsuccessful in doing, I came across a document called "Milk
3 Pricing in the United States" by Donald Blaney and
4 Alden Manchester. It's Agriculture Information Bulletin Number
5 AIB 761. In that reference, they, in essence, have put
6 together a historical document, if you will, of how milk became
7 regulated and the why's and wherefore's, and refer to orderly
8 marketing and why Federal Orders took the place, in some cases,
9 of State Orders, and that it wasn't just looking at the needs
10 of the dairy farmer producer, but also the consuming public;
11 and that it was part of USDA's mandate, at least based on the
12 author's representations, that USDA, when they came forward
13 with Federal Order regulations, that they needed to have a
14 balance of producer interests and the consuming public
15 interests.

16 Q. I somehow feel that you anticipated that question. So
17 I guess, I guess I'm interested, then, kind of jumping off from
18 there, and in what way specifically Proposal 1 fails to, you
19 know, address that concern in your mind.

20 A. Proposal 1 would increase the cost of milk in the
21 market, and therefore, likely increase the cost of milk to the
22 consumer. And there's been no work that I have seen from the
23 proponents that deals with that ramification in the
24 marketplace.

25 Q. Aside from a potential increase in price, in your mind,

1 do you, would you expect or anticipate any, or have any
2 concerns about an adequate supply of fluid milk to the consumer
3 despite what the price might be?

4 A. I think there's adequate raw milk in the market
5 available.

6 Q. Okay. Have you personally prepared any, done any
7 studies to determine what the price impact to consumers would
8 be?

9 A. I have not.

10 Q. Okay. How would, you have indicated that HP Hood would
11 support Proposal 2, if, I believe, USDA was inclined to put an
12 order in place in California, correct?

13 A. That's correct.

14 Q. How would Proposal 2, in what way does that impact the
15 consumer?

16 A. I haven't fully evaluated that.

17 Q. Okay. Let me draw your attention to the first page of
18 your testimony, then. In your second sentence, in the second
19 paragraph, you make a statement that you believe that
20 "disorderly marketing", and you have quoted that phrase,
21 conditions must be proved by the proponents. But then you,
22 yourself, admit that you have been unable to define the phrase
23 "disorderly market" in terms of any USDA type definition,
24 correct?

25 A. Right. And that's why I clarified by saying that there

1 are references often times about orderly markets, and in USDA's
2 own decisions, I believe, in fact, when I did word search,
3 disorderly marketing has been described in their findings of
4 fact, the term has been used.

5 Q. It's been used, but not defined, correct?

6 A. It's been used in many different contexts, not one
7 definition.

8 Q. So how is it that you conclude that that's the
9 standard?

10 A. I didn't follow the question, I'm sorry.

11 Q. Okay. Let me ask it a different way. Have you
12 considered the possibility that disorderly marketing may not be
13 the standard that's required, since there's, by your own
14 admission, a lack of use by that, a regular use of that term?

15 A. There has, and is, as in the document that I just
16 referenced that's available from the Ag Department, an
17 indication that promulgation of the Orders is to seek orderly
18 marketing, and therefore, the reverse is true, to avoid
19 disorderly marketing.

20 Q. Okay. That's all I have, thanks.

21 A. Okay.

22 JUDGE CLIFTON: Who next will ask cross-examination
23 questions of Mr. Suever? Mr. Beshore, I don't know that this
24 is cross, but you can come forward.

25 MR. BESHORE: I think it is -- I won't be cross.

1 CROSS-EXAMINATION

2 BY MR. BESHORE:

3 Q. But this is a follow up to the question regarding
4 Northeast depooling, or your comment regarding the Northeast
5 depooling, well, I'm not sure who asked the question, maybe
6 Mr. English.

7 Were you --

8 A. I did make a mistake in my comment there, which you are
9 probably going to address.

10 Q. Okay. Let me see if we can clarify that. For you,
11 that is HP Hood, involved in depooling milk recent, in the
12 spring flush period of this year in the Northeast?

13 A. We were not.

14 Q. Okay. So you don't have any personal knowledge or
15 direct knowledge of whether there was milk depooled or for what
16 purposes?

17 A. Yeah. My description of the depooling was
18 inappropriate in context that was described. What I intended
19 to say but didn't say clearly, is that the Department, this
20 spring, USDA Federal Order 1 was asked to deal with
21 circumstances quite unique because of the excess milk,
22 depooling was not found to be required, and the USDA Market
23 Administration allowed for milk to be pooled even when it was
24 disposed of in non-typical market circumstances.

25 Q. Okay. So, in fact, with a, what I think anyone, what

1 we can all describe as a type of glut of milk in the Northeast
2 this past spring, the regulatory, the regulatory remedy, or the
3 regulatory result sought and approved through the Market
4 Administrator was to make sure that all the milk was, in fact,
5 pooled, and not depooled, correct?

6 A. That portion, yes.

7 Q. Okay.

8 JUDGE CLIFTON: I'm sorry, what do you mean by that
9 portion?

10 MR. SUEVER: The portion that was disposed of that more
11 typical normal circumstances would have been depooled, was
12 allowed to remain pooled, or a possible outlet or option that
13 could have been used, was to depool. But in this case, wasn't
14 necessary.

15 BY MR. BESHORE:

16 Q. Okay. Now, but this is what I want to clear up. Okay?
17 I think you suggested this again. That when milk is in a
18 distressed, sometimes referred to as distressed situation, in a
19 difficult seller's market condition, depooling only compounds
20 the problem, wouldn't you -- does it not, Mr. Suever? That is,
21 when you depool, you lose the pool draw on the milk, in
22 addition to whatever losses a pooling handler may suffer in
23 selling the milk below class price. You understand that
24 dynamic?

25 A. Yes.

1 Q. So when there's a long market, the last thing you want
2 to do is depool and lose the pool draw on that milk; isn't that
3 correct?

4 A. Yes, I definitely crossed intent there in my
5 description.

6 Q. Okay. Well, I think --

7 A. You are absolutely correct.

8 Q. And I think it is a very commonly misunderstood and
9 mischaracterized market dynamic, so I hope --

10 A. Mischaracterized it there, without question.

11 Q. Okay. So just to tie it up, then. Depooling is done
12 when it's advantageous to the depooler who wants to avoid,
13 whose got a market price for his product or for his Class III,
14 let's say, that's higher than the Order price, and he depools
15 to keep it all for himself and avoid paying into the pool.

16 A. That's one option, yes.

17 Q. The way it works. Well, that's the way it works,
18 right?

19 A. It could be, yes.

20 Q. Well, no, I don't want it could be, that is the way it
21 works, right?

22 A. Yes.

23 Q. Thank you.

24 CROSS-EXAMINATION

25 BY MR. ENGLISH:

1 Q. Chip English, and I'm only following up on those
2 points.

3 Nonetheless, the point of what happened in the
4 Northeast was to permit people the option to remain on the pool
5 given the extraordinary circumstances of what was going on in
6 the market, correct?

7 A. Yes.

8 Q. Had the businesses chosen, they would have had the
9 opportunity not to pool the milk, right?

10 A. Yes.

11 Q. Okay. And when we talk about pooling and depooling,
12 and maybe there's a little imprecision occasionally, one of the
13 things that goes on in these markets when they are long, yes,
14 maybe extraordinary circumstances and product ended up in
15 lagoons, but an alternative to putting it in a lagoon, the
16 product, at least in Federal Orders, after the responsible
17 handler has accounted for the milk, it can be sold to another
18 handler in the marketplace at below class price, correct?

19 A. Yes.

20 Q. And that is one of the things that clearly happened in
21 the Northeast this spring, correct?

22 A. It did.

23 Q. At substantial dollars below class, correct? As
24 reported by Dairy Market News?

25 A. That's where I, in fact, read it.

1 Q. Thank you.

2 JUDGE CLIFTON: Mr. English, I didn't catch the word that
3 sounded like "legume" what is that?

4 MR. ENGLISH: It's like a --

5 JUDGE CLIFTON: Oh, a lagoon like a lake.

6 MR. ENGLISH: Like an environmental area for disposing of
7 animal waste or otherwise.

8 JUDGE CLIFTON: Oh, you are talking about just dumping the
9 milk?

10 MR. ENGLISH: Yes, your Honor. Unfortunately, we had that
11 situation this year, not just in the spring, we had
12 extraordinary situations with supplies of milk in certain parts
13 of the country, and the milk was dumped.

14 CROSS-EXAMINATION

15 BY MR. VETNE:

16 Q. John Vetne for Hilmar Cheese.

17 Mr. English's description did not come as a witness, as
18 from the mouth of a witness, so let me ask a question. Do you
19 know Peter Fredericks, Economist with Order 1?

20 A. I do.

21 Q. Okay. I looked online, he gave a presentation to a
22 national organization of governmental milk regulators last
23 June, and he's describing the situation in Order 1. I'm going
24 to read from here and I'm going to ask if that describes the,
25 what you call circumstances, non-usual circumstances for

1 disposing of milk. The power point says, "Allowing the pooling
2 of milk dumped at the farm or nonplant location due to surplus
3 conditions." Is that what you were referring to?

4 A. It was.

5 Q. Thank you.

6 JUDGE CLIFTON: Who else has cross-examination for
7 Mr. Suever?

8 CROSS-EXAMINATION

9 BY MR. RICHMOND:

10 Q. Bill Richmond, USDA.

11 Thanks again, Mr. Suever, for your testimony. We
12 appreciate it. Getting back to this "gold standard"
13 discussion -- just kidding.

14 If we could turn to page 2, the bottom paragraph, first
15 sentence of your testimony says that, "another potential
16 consequence of Proposal 1 is that dairy manufacturing plants
17 may find that they can't keep pace with international market
18 dynamics."

19 You mentioned that HP Hood is an exporter of aseptic
20 fluid milk products, I presume?

21 A. ESL and aseptic.

22 Q. ESL and aseptic products. So I feel like, at least
23 personally, I'm a lot more familiar with the export dynamics
24 for powders, butter, cheese and the like, but I would really
25 appreciate your perspective as an exporter of as a product like

1 ESL or aseptic, and kind of just describing how, you know,
2 HP Hood may be uniquely impacted, and just a little bit
3 additional explanation on that sentence and how maybe a dairy
4 manufacturing plant, as your, as your own, may not be able to
5 keep pace.

6 A. Yes. As was indicated, we have a different
7 classification, if you will, for our export products under
8 California's regulations, and that's what allows us to be
9 competitive, to be able to export our products in the
10 international market. So the current calculations and the
11 changes in pricing in California allow us to be able to
12 actually be competitive. Our concern is, without that
13 opportunity, our ability to compete aggressively in the
14 international marketplace will be thwarted.

15 Q. Okay. Does HP Hood have any other ESL or aseptic
16 manufacturing facilities that manufacture products for export?

17 A. Yes.

18 Q. Are those facilities regulated by any Federal Milk
19 Marketing Orders?

20 A. Yes.

21 Q. They are? Okay. That's all we have. I appreciate it.

22 JUDGE CLIFTON: Mr. Suever, do you want to expand on that
23 at all?

24 MR. SUEVER: The product that we export from our other
25 facilities, we don't sell directly. We sell to distributors

1 and the product finds itself into the international
2 marketplace. We, up to this point, have been unsuccessful to
3 sell into the international marketplace from our federally
4 regulated processing plants, but we do know, because we receive
5 calls and inquiries, where our product shows up in
6 international marketplace from plants that we didn't intend the
7 product to go, but it ends up in the international marketplace.

8 BY MR. RICHMOND:

9 Q. And that product you are referring to had already been
10 priced in terms of the existing Marketing Order?

11 A. Yes.

12 Q. I appreciate it. Thank you for the clarification.

13 JUDGE CLIFTON: Is there any other cross-examination before
14 I invite redirect? None. Any redirect?

15 MS. VULIN: No, thank you, your Honor.

16 JUDGE CLIFTON: All right. Mr. Suever, thank you so much.

17 MR. ENGLISH: Chip English. Your Honor, the next witness
18 will be Greg Dryer, and we have got a 19-page statement with
19 tables and with lots of big spacing, along with two attachments
20 to the statement, and we'll be passing that out and then we'll
21 ask for a numbering.

22 JUDGE CLIFTON: We're back on record at 3:12. Mr. English?

23 MR. ENGLISH: Thank you, your Honor. While we were off
24 record, we have passed out three documents, which I think we
25 have confirmed everyone has copies of, and the first document

1 that I would like to have marked, I believe, as Exhibit 91, is
2 the testimony of Greg Dryer with a caption of this proceeding,
3 and it is a 19-page statement that includes tables.

4 JUDGE CLIFTON: All right. So Ms. Elliott, I'm marking a
5 19-page document as Exhibit 91. Is that good?

6 MS. ELLIOTT: That's correct.

7 JUDGE CLIFTON: Thank you.

8 (Thereafter, Exhibit 91 was marked
9 for identification.)

10 MR. ENGLISH: And the next one I would have marked as
11 Exhibit 92, is the Milk Producers Council Newsletter dated
12 November 7 & 14, 2008, Part 1, from the 2008 issue, and part 2,
13 and it's got some gray-scale highlighting.

14 JUDGE CLIFTON: And you say that would be Exhibit 92?

15 MR. ENGLISH: That was my proposal, yes.

16 (Thereafter, Exhibit 92 was marked
17 for identification.)

18 MR. ENGLISH: And then the third document for 93, is a
19 9-page document, which is a Memorandum dated April 13, 2015,
20 addressed to the Agricultural Marketing Service by the
21 Wisconsin Cheese Makers Association.

22 JUDGE CLIFTON: All right. And I'm marking that as
23 Exhibit 93.

24 (Thereafter, Exhibit 93, was marked
25 for identification.)

1 JUDGE CLIFTON: Mr. Dryer, I believe this is, I believe
2 this is the first time you have testified in this proceeding;
3 is that correct?

4 MR. DRYER: That is correct.

5 JUDGE CLIFTON: All right. I will swear you in in a seated
6 position. Would you raise your right hand?

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

9 MR. DRYER: I do.

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

12 MR. DRYER: My name is Greg Dryer, G-R-E-G, D-R-Y-E-R.

13 JUDGE CLIFTON: And somewhere in here I have a longer name
14 for you. How are you also known?

15 MR. DRYER: This is my curse. I had to explain this at the
16 California hearing.

17 My full name is Ray Gregory Dryer. My father's name
18 was Ray, he insisted on naming me after him. My mother
19 preferred Gregory, and he won the battle, but obviously she won
20 the war because she made sure I was never called nothing but
21 Gregory. I am cursed with having to explain this 10,000 times.

22 JUDGE CLIFTON: So the way I think I have seen your name is
23 R. Gregory Dryer.

24 MR. DRYER: Correct, that's what I use for a legal name.

25 JUDGE CLIFTON: All right. Good. Thank you. Mr. English,

1 you may proceed.

2 MR. ENGLISH: Thank you, Judge Clifton.

3 DIRECT EXAMINATION

4 BY MR. ENGLISH:

5 Q. So Mr. Dryer, as I have with some of the past
6 witnesses, I'm going to ask you to read some sections and then
7 I'm going to interrupt to ask questions as we are going along.
8 So if you could read page 1 and the first paragraph of page 2,
9 I'll have some questions.

10 A. Fine.

11 This testimony is submitted on behalf of Saputo Cheese
12 USA, Inc., a U.S. division of Saputo, Inc., a publicly-traded,
13 international dairy and grocery products manufacturer and
14 marketer. Saputo produces, markets, and distributes a wide
15 array of dairy products, including cheese, fluid milk, extended
16 shelf life milk and cream products, cultured products, and
17 dairy ingredients. Saputo is one the top ten dairy processors
18 in the world; the largest cheese manufacturer and the leading
19 fluid milk and cream processor in Canada; the third largest
20 dairy producer in Argentina; and the fourth largest in
21 Australia. In the U.S., Saputo ranks among the top three
22 cheese producers and is one of the largest producers of
23 extended shelf life and cultured dairy products. Saputo
24 operates 55 plants worldwide, employing 12,060 people and
25 selling products in more than 40 countries. In the U.S.,

1 Saputo has 24 plants in 11 states, employing more than 5,000
2 people. 7 of those plants and approximately 1500 of those
3 people, reside here in California.

4 JUDGE CLIFTON: Let me stop you and check the quality of
5 the sound. Can everyone hear him clearly?

6 MR. ENGLISH: I would ask you to slow down just a little
7 bit. There's a sign on our podium today that says, "Slow,
8 thanks," with a smiley face. So I just looked at it again, and
9 I'm sure it applies to me as well, but for those reading
10 statements, sometimes we tend to read faster than the court
11 reporter can realistically be expected to take it down. So I
12 would ask you to slow down.

13 Continue.

14 MR. DRYER: I am Greg Dryer, Senior Vice President of
15 Industry and Government Relations for Saputo Cheese USA, Inc.
16 I have been directly employed in the U.S. dairy industry for
17 more than 35 years in a variety of roles. And I should say in
18 the interest of full disclosure, not much more than 35 years,
19 October 1st was my 35th anniversary. So -- I currently
20 represent the company on the Board of Directors of a number of
21 U.S. trade associations in matters such as the one under
22 consideration here. My prior background was as a CPA in the
23 field of public accounting.

24 BY MR. ENGLISH:

25 Q. If you could stop there. A number of witnesses have

1 been a bit shy, so let's discuss this a little bit.

2 When you say you have been in the dairy industry for
3 more than 35 years, has that been with one company?

4 A. It's been with one entity, but the ownership has
5 changed hands a number of times over those years.

6 Q. Essentially, it is the entity that today is called
7 Saputo?

8 A. Correct.

9 Q. And so I don't need to know every one of your roles,
10 but why don't you give us sort of a gamut of your roles in
11 those 35 years?

12 A. Well, I started out as a controller of a family dairy
13 business. I became a Vice President of Finance, Executive Vice
14 President, eventually President. And then for Saputo I have
15 been Executive Vice President of Administration and Services
16 and General Vice President of Operations. And most recently my
17 current title is Senior VP of Industry and Government
18 Relations.

19 Q. And during those 35 years, have you been involved with,
20 whether it's Federal or State, minimum price regulation and
21 pooling of milk?

22 A. Yes.

23 Q. Have you testified in any proceedings such as this
24 before?

25 A. I have testified at former USDA hearings and California

1 hearings.

2 Q. So continue with your testimony, I'm sorry.

3 A. And I didn't --

4 Q. You want to add something?

5 A. Other people have mentioned their educational
6 background. I have a PDA from University of Wisconsin,
7 Milwaukee, and a CPA.

8 Q. Thank you. I'm sorry for cutting you off. Anything
9 else you want to add about your background?

10 A. No thanks.

11 Q. Okay. So continue with your statement, then, please.

12 A. Saputo's position for this hearing is that promulgation
13 of the Federal Order for California it not warranted. In the
14 event that the Secretary decides otherwise, we oppose all
15 proposals other than the proposal submitted by the Dairy
16 Institute of California.

17 ORDERLY MARKETING OF MILK IN CALIFORNIA.

18 The question for USDA to ponder in this decision to
19 promulgate a new Federal Order for the State of California is
20 whether this petition seeks to resolve a condition of
21 disorderly marketing or simply an attempt at achieving
22 government mandated price enhancement.

23 In the past five years there have been seven CDFA
24 hearings involving Class 4b milk. The Secretary denied
25 petitions for seven additional hearings -- sorry, excuse me,

1 I'll start over. The Secretary denied seven additional
2 petitions for hearings during that time. In 2012, dairy
3 producers, and I would like to insert the word "unsuccessfully"
4 here, it got dropped in my last version, but I intended it to
5 say -- in 2012, dairy producers, unsuccessfully, sued the CDFA
6 for refusing to bring California's 4b price into closer
7 alignment with the USDA Class III price.

8 JUDGE CLIFTON: All right. Let us take this opportunity to
9 do that now. On page 2, the next to the last paragraph, third
10 line down.

11 Ms. Elliott, we're going to insert the word
12 "unsuccessfully" between "producers" and "sued". And I'm going
13 to ask you to read it again, because you left out one word.

14 MR. DRYER: I apologize.

15 In 2012, dairy producers unsuccessfully sued the CDFA
16 for refusing to bring California's Class 4b price into closer
17 alignment with the USDA Class III price.

18 Regarding orderly marketing, one could argue that the
19 State system in California, in many respects, facilitates
20 orderly marketing as well or better than does the Federal Order
21 system.

22 - The number of public hearings held to address
23 stakeholders' concerns mentioned in the previous
24 paragraph supports that hypothesis.

25 - CDFA is obligated to announce the decision within 52

1 days follow the end of a hearing.

2 - CURRENT commercial end-product prices reported from
3 the 26th of the prior month through the 25th of the
4 current month serve as the basis for California milk
5 prices. Producers and processors receive market
6 signals in real time.

7 - The Class 4b price formula has changed seven times in
8 the last five years.

9 - CDFA conducts annual marketing cost studies and
10 publishes the results.

11 JUDGE CLIFTON: Start that one again, please.

12 MR. DRYER: CDFA conducts annual manufacturing cost studies
13 and publishes the results. Those studies can provide the basis
14 for hearing requests to update make allowances in milk price
15 formulas.

16 USDA continues to use an "other solids" factor based on
17 the dry whey price that has periodically created enormous
18 problems for cheese makers around the country. To elucidate
19 that point, attached are comments that were filed by the
20 Wisconsin Cheese Makers Association, April 13th, 2015, on the
21 610 Review of Federal Milk Marketing Orders Docket
22 ID: AMS-DA-09-0065.

23 To quote from that document:

24 "The California Department of Food and Agriculture
25 faced a similar problem when they moved to a cheese milk

1 pricing formula that valued whey solids in a similar fashion to
2 Federal Milk Marketing Order Class III other solids. The State
3 returned to a lower whey valuation for their Class 4b formula
4 when it became apparent that their formula overvalued milk
5 relative to its true worth for the vast majority of California
6 cheese processors that do not manufacture dry whey." "The
7 true, basic commodity should be reflected in the Class III milk
8 price formula is separated, wet whey. Dried whey is a
9 value-added product produced by a small number of plants in the
10 United States. Separated, wet whey is generally purchased on a
11 contract basis using a price that is a function of the price of
12 whey protein concentrate containing 34 percent protein, (WPC
13 34)."

14 BY MR. ENGLISH:

15 Q. Would you -- you said "function" rather than "fraction"
16 in that previous sentence. Would you read the sentence again
17 starting with separated, wet whey?

18 A. Okay. Sorry.

19 Q. If I didn't do it, Judge Clifton would have had you do
20 it.

21 A. Separated, wet whey is generally purchased on a
22 contract basis using a price that is a fraction of the price of
23 whey protein concentrate containing 34 percent protein.
24 (WPC 34).

25 Q. All right. Continue.

1 A. There are many similarities and differences between the
2 two systems, but perhaps the most striking is the fact that in
3 California, selling market milk within the state at below the
4 minimum regulated price is illegal.

5 And I have to add here, that I have learned in the last
6 couple of days of testimony from Dr. Schiek, that there are
7 exceptions to that that I was unaware of previously. I have
8 never experienced or heard of one of those ever taking place,
9 but apparently it is possible to have and so I just wanted to
10 correct my statement there.

11 In the Federal Order regions that is not the case.
12 Plants may be pooled or purchase surplus milk from farmer
13 cooperatives at below class prices. The significance of that
14 distinction cannot be overstated. When such a firm price floor
15 exists, establishing minimum prices above market clearing
16 levels results in chaos. Imagine what might have happened if
17 mandatory pooling had existed across the country in this past
18 spring when surplus milk grossly exceeded demand in several
19 regions. From 1980 through last year, milk production has more
20 than tripled in the State of California. California producers
21 are among the most prolific and proficient in the world. It's
22 important to recognize that that the enormous increase of
23 production was not demand driven.

24 Q. So you then included on page 5, a chart showing the
25 California milk production growth, which is also by

1 circumstance, because you did this independent of Dr. Schiek,
2 correct?

3 A. Correct.

4 Q. A table that he's included in his testimony, correct?

5 A. I saw it, yes.

6 Q. But you put yours in your testimony without consulting
7 with him; is that correct?

8 A. I did.

9 Q. So --

10 A. So you can see how dramatic the increase has been.

11 Q. Is there anything else you want to say about it other
12 than that?

13 A. Not really. Other than part of my research here was to
14 try to understand the reasoning behind the explosion in milk
15 production in California. I'll get into that as my testimony
16 continues.

17 Q. Attached are Milk Producers Council Newsletter excerpts
18 from November 7th --

19 JUDGE CLIFTON: I'm not getting enough volume. I think we
20 need, because it is different when you are reading than it is
21 when you are looking right at Mr. English, so I think we need
22 to swing it a little to the left to capture your -- yeah, I
23 think that might do it. Thank you.

24 MR. DRYER: Thanks. I'm sorry.

25 Attached are Milk Producers Council Newsletter excerpts

1 from November 7th and 14th, 2008, by Sybrand Vander Dussen -- I
2 apologize if I pronounced that name incorrectly -- who was
3 President of MPC at that time. Quoting from it: "The dairy
4 industry in California continues its addiction of
5 over-production of milk. Dairy producers seem to have only one
6 clear focus, produce more milk. As costs go up, milk prices
7 decline, we produce more milk. As co-ops battle to place milk
8 and milk products, we produce more milk." "But the reality is,
9 dairymen produce in an unrestrained fashion with no
10 consideration of demand leaving the industry in a perpetual
11 state of overproduction, which causes a myriad of problems all
12 of which should be unnecessary." "Our co-ops cannot demand
13 higher prices from buyers simply because they must get rid of
14 more milk than the market wants." "The overreaching theme here
15 is that overproduction is a single --"

16 JUDGE CLIFTON: Start again that sentence again, please.
17 It's not an overreaching theme.

18 MR. DRYER: Overarching.

19 JUDGE CLIFTON: Okay. Start that one again.

20 MR. DRYER: I should look at the words before.

21 "The overarching theme here is that overproduction is
22 the single culprit keeping us from operating an orderly,
23 intelligent industry," -- actually, I didn't write that.
24 "State minimum prices are exactly that, minimums. Nothing in
25 the policy or law keeps co-ops from setting a higher price.

1 Only the neutering effect of overproduction." "We don't need
2 Sacramento, we don't need minimum prices, we don't need the
3 support price program. Producers, through their
4 Cooperatives --

5 JUDGE CLIFTON: And then you ended the quote.

6 MR. DRYER: Yeah, end quote. This is now me. This I
7 wrote.

8 Producers, through their Cooperatives, found the need
9 to build capacity to accommodate the volume of milk that vastly
10 exceeded local demand. The orientation was toward butter
11 powder plants, but there were cheese plants constructed as
12 well. Most of those cooperative cheese plants have since
13 failed. The cheese plants closed or sold out because they were
14 unable to provide adequate returns to their members to justify
15 their continued existence, given California's economic
16 conditions in milk price system.

17 The fact that California has predominantly enjoyed a
18 milk surplus has led to orderly marketing but with less
19 competition for milk and lower than comparable prices than
20 those in the Federal Orders. Class I needs are easily
21 satiated, as are the needs of most other buyers. Difficulty
22 only seems to arise when milk exceeds local demand at the
23 regulated price.

24 JUDGE CLIFTON: Start that sentence again, please.

25 MR. DRYER: Difficulty only seems to arise when supply

1 exceeds local demand at the regulated price. In that case,
2 sellers must ship milk discounted below the regulated price,
3 out-of-state, and often at great distances to competitors of
4 California processors, providing those competitors with a
5 significant cost advantage.

6 BY MR. ENGLISH:

7 Q. Up at the top of page 7 you have now included a chart.
8 Do you want to discuss that for a few minutes?

9 A. Okay. Really, the chart belongs more after the
10 narrative.

11 Q. Would you like to read the narrative first?

12 A. I think so.

13 It is important to understand why California surplus
14 exists. In 2014, only 15 states were home to 500 or more dairy
15 farms. Of those states, only two averaged more than 200 cows
16 per herd. Idaho averaged roughly 1100 per herd and California
17 1200. According to USDA, scale has an enormous impact on the
18 cost of milk production. In a report titled "Profits, Costs,
19 and the Changing Structure of Dairy Farming" published in
20 September 2007, by USDA ERS, the cost of production from herds
21 of a thousand or more cows was estimated to be \$7.23 per
22 hundredweight lower than herds of 100 to 199 cows based on 2005
23 data.

24 The chart above that you referenced, Chip, just
25 reflects herd sizes of those 15 states that have 500 or more

1 farms, dairy farms. So you can see the scale of Idaho and
2 California relative to any other states.

3 Q. And the source is listed on the chart?

4 A. Yes.

5 Q. Okay. And your Honor, obviously since we have made
6 this an exhibit, we are not anticipating in any way that the
7 court reporter is going to be reproducing the charts.

8 A. So in that paragraph I refer to \$7.23 per
9 hundredweight. At the top of the next page is a table directly
10 from that report, where costs are shown in columns by herd
11 size. And you can see in the column 100 to 199 what the total
12 cost is, and greater than 999, what the total cost is, and the
13 difference there is that \$7.23 difference.

14 Q. All right.

15 A. So to quote directly from that report, and I quote:

16 "Smaller farms tend to get higher prices for their milk
17 than larger farms. But cost differences tend to overwhelm this
18 advantage: larger farms, especially those with more than 1,000
19 cows are realizing economic profits, while most smaller farms
20 are realizing negative net returns. In turn, differences in
21 returns are driving investment decisions that are shifting
22 production to larger farms."

23 The average herd size for all U.S. states, excluding
24 California 2014, was 171 cows. Quoting from a December '14,
25 December 1st, 2014 article on the USDA ERS website by

1 James MacDonald and Doris Newton entitled "Milk Production
2 Continues Shifting to Large-Scale Farms." I quote, "The shift
3 to larger dairy farms is driven largely by the economics of
4 dairy farming. Average costs per hundredweight, milk produced
5 are lower in larger herds and the differences are substantial.

6 JUDGE CLIFTON: Let me start you again. That appears to be
7 a heading, is that right? Because it's in bold?

8 MR. DRYER: I just embolded it because of its importance.

9 JUDGE CLIFTON: Very good. Then, read it carefully,
10 please. We're at the top of page 9.

11 MR. DRYER: "Average costs of production, per hundredweight
12 of milk produced are lower in larger herds, and the differences
13 are substantial. These costs include the estimated cost of a
14 farm family's labor, as well as capital costs, in addition to
15 the cash expenses that are included under operating costs."
16 Further, "While some small farms earn profits and some large
17 farms incur losses, financial performance is linked to herd
18 size. Most of the largest dairy farms generate gross returns
19 that exceed full costs, while most small and mid-size dairy
20 farms do not earn enough to cover full costs. Full costs
21 include an annualized cost of capital, as well as the cost of
22 unpaid family labor (measured as what they could earn off the
23 farm), in addition to cash operating expenses. The cost
24 differences reflect differences in input use. On average,
25 larger farms use less labor, capital, and feed per

1 hundredweight of milk produced. These financial returns
2 provide an impetus for structural change."

3 USDA ERS continues to report milk cost of production by
4 state and by size of operation based on the Agricultural
5 Resource Management Surveys (ARMS) data from milk producers
6 conducted every five years. Years between surveys are adjusted
7 using indexes that reflect differences between the period and
8 the baseline. To the best of my knowledge, these are the ONLY
9 reports that compare U.S. farms of all sizes by state or
10 region. From 2010 through 2014, California ranked second
11 lowest in cost among, among the 23 reported states.
12 California's average cost over those five years was below the
13 following states: Wisconsin by \$8.70 per hundredweight;
14 New York by \$8.34 per hundredweight; Pennsylvania by \$12.66 per
15 hundredweight; Minnesota by \$10.99 per hundredweight. Idaho,
16 which is home to many former California producers, was the only
17 state with the cost that was below that of California and that
18 was by \$4.78 per hundredweight.

19 Q. So we're now over on page 10. And does this chart
20 depict what you were just discussing?

21 A. Exactly.

22 Q. And did you create this chart?

23 A. I did.

24 Q. And the data selected is from the source that --

25 A. ERS Cost Reports.

1 Q. So why don't you just briefly discuss how the chart
2 works?

3 A. So basically the bars show the difference in cost
4 between each state listed of the 23 versus California, so
5 California shows obviously zero difference versus California.
6 All of the states, other than Idaho, were higher than
7 California. And the average of all the states was \$4.19 higher
8 than California.

9 Q. So the last column says all states, and that's the
10 average? The very last one?

11 A. That's right.

12 Q. Anything else you want to discuss about that chart?

13 A. No, I think that is really self-explanatory.

14 Q. All right. Continue, please.

15 A. The 2014 USDA "Milk cost of production by size of
16 operation" report pegged the cost advantage of a one thousand
17 or more cow farm over a farm with 100 to 199 cows at \$11.54 per
18 hundredweight. Given the magnitude of this cost advantage,
19 it's not difficult to understand the propensity of those large
20 producers to grow.

21 CDFA has been responsible and mindful that a regulated
22 minimum price that is high enough to inhibit demand encourage
23 more supply might tip the delicate balance in California and
24 lead to disorderly marketing.

25 Q. Is it appropriate to talk about this chart now or after

1 some more text?

2 A. We can talk about now. It's a scattered chart which
3 plots milk costs against herd size, and some of the dots of
4 interest I label so you can see where Wisconsin is small herd
5 size, high milk cost. And then you can see states like Kansas
6 and Texas, somewhat larger herds and lower costs. And off to
7 the far right you can see where California and Idaho, very
8 large herds, very low cost.

9 Q. And Florida is also listed?

10 A. Florida has quite large herds, and their cost is still
11 substantially higher than California, but they have quite large
12 herds.

13 Q. Okay. Continue?

14 A. This is probably -- I think that's somewhat weather
15 related in Florida.

16 There are other cost studies published, but they
17 typically compare farms of similar size. Genske, Mulder & Co.,
18 LLC, for example -- do I need to spell that?

19 JUDGE CLIFTON: No, because it is printed out on page 11 of
20 your statement, so you are spared.

21 MR. DRYER: Thank you. I'm struggling as it is.

22 -- has most recently reported 2013 dairy income and
23 expense data in Hoard's Dairyman. It compared farms ranging
24 from about 1800 to 3000 cows in size, on average. The regions
25 compared were Arizona, California, Colorado, Idaho, New Mexico,

1 Texas, Washington, Upper Plains states, and Lower Plains
2 states. Of the nine regions compared in the 2013 report,
3 California had the lowest total expenses per hundredweight of
4 milk produced, and the second highest net income per
5 hundredweight. This is within the context of the existing
6 California milk pricing system.

7 Another report available in the public domain is
8 Frazer, LLP's, "Dairy Farm Operating Trends." The report
9 compiles data from dairy operations in Southern California, the
10 San Joaquin Valley, Kern County, Arizona, Idaho, New Mexico,
11 Texas Panhandle, and the Pacific Northwest, which consists of
12 Washington and Oregon operating collectively. The report
13 includes a comparison of the results in those regions listed
14 both on a "per hundredweight of milk" basis and on a "per head"
15 basis. To quote from that report, "Our publication continues
16 to be recognized as the top industry source for relevant dairy
17 statistics. This report is provided to and widely utilized by
18 dairy farmers, lending institutions, universities, colleges and
19 other agribusiness industries." In reviewing the reports for
20 the five years ending 2014, Kern County, California had the
21 highest net income among all the regions in 2010 and '11; Idaho
22 had the highest net income in 2012 and '13; and the Panhandle
23 of Texas had the highest net income in 2014. For 2014, the
24 average net income for the three California regions was \$5.10
25 per hundredweight. The income for the five regions that report

1 outside of California averaged \$5.16 per hundredweight. Based
2 on the Frazer and Genske studies, it is reasonable to conclude
3 that California producers are competitive with other regions in
4 the Western United States, despite operating within the pricing
5 confines of the California Milk Marketing Order.

6 At the top of the next page I included a chart that
7 depicted the results of the 2014 net incomes by region, and you
8 can see the average of the three California regions versus the
9 regions outside of California in the average that are within 6
10 cents of each other.

11 California did experience a reduction in average
12 licensed dairy herds in 2014, according to the USDA milk
13 production report dated February 20th, 2015, which comparing
14 2014 with 2013. The percentage reduction in California herds,
15 however, ranked 34th among the 50 states, and among the 15
16 states with 500 or more herds, only three lost the lower
17 percentage of their herds than did California. One of those
18 was Pennsylvania, the only state to report an increase in herd
19 numbers. The suggestion that conditions are worse in
20 California than other states, is simply not supported by the
21 facts.

22 BY MR. ENGLISH:

23 Q. The chart at the bottom of page 13.

24 A. The 13 chart just simply reflects the cow numbers have
25 been relatively stable in recent years in California, so

1 there's been testimony that cows are dramatically leaving the
2 state, but it is not supported by the USDA numbers.

3 Q. Okay. And then you have got two charts over on
4 Page 14.

5 A. Right. The cow chart, I just took the last twelve
6 years and calculated the compounded annual growth rate, which
7 is negative for all states presented, just to show where
8 California ranked. And California has lost farms that are
9 rated 2.7 percent over that period, and you can see where they
10 fit relative to all the other states. Much better position
11 than almost all states just for being lower.

12 And then the bottom chart shows for just the last year
13 versus 2013 in California is the red bar far out to the right.
14 Again, among the best results of all the states. You can see
15 Pennsylvania all by themselves on the far right where they have
16 actually experienced an increase.

17 Q. What about all the states that say Delaware, New
18 Hampshire, South Carolina, Connecticut.

19 A. Those are all zeroes.

20 Q. Okay. Okay. So continue.

21 A. Okay. And next page, the rapid growth in California's
22 milk supply has led to the construction of very large plants
23 producing bulk commodity products capable of accommodating the
24 ever-increasing milk flow.

25 So I've included a chart showing milk production by the

1 top 23 states, and you can see a magnitude of California's
2 importance in the milk supply, and then on the far right you
3 have got Wisconsin being the next largest. What I included on
4 this chart, and I'll discuss later, I wanted to show the milk
5 possessed by three individual cheese plants in California,
6 that's the bar with the red bars immediately adjacent to the
7 California bar, because again, I get into that a little bit
8 later in my testimony, the magnitude of the impact of those
9 three plants have on the State of California.

10 Bulk projects command lower margins than those of
11 smaller specialty plants that operate in other key cheese
12 producing areas such as Wisconsin, Minnesota, New York,
13 Pennsylvania, and Vermont. In other areas of the west, where
14 larger plants are more common, the industry's either completely
15 unregulated such as Idaho, or most of the manufacturing is
16 dominated by cooperatives, which have pooling and pricing
17 flexibility to adjust to changing market conditions. According
18 to background materials provided by CDFR for the hearing held
19 on June 3rd, 2015, from January through March 2015, 57 cheese
20 plants processed 45 percent of California's milk.

21 Just three of those cheese plants processed more than
22 56 percent of that Class 4b milk, which means they processed in
23 excess of 25 percent of the entire state's milk supply. On an
24 annualized basis, those --

25 JUDGE CLIFTON: It may mean exactly the same thing to say

1 it the way you read it rather than the way it's written, but
2 just start with the figure "in excess of 25 percent" and read
3 the rest of that sentence, please.

4 MR. DRYER: In excess of 25 percent of the state's entire
5 milk supply.

6 JUDGE CLIFTON: Thank you.

7 MR. DRYER: On an annualized basis, just those three plants
8 process more milk than is produced in 45 of the 50 United
9 States, based on 2014 production numbers. More than the states
10 of Texas, Michigan, Minnesota, or New Mexico. More than
11 Washington and Oregon combined. The Preliminary Regulatory
12 Impact Analysis in Table B11 showing class price at test
13 changes under the Cooperative proposal reveals an average
14 annual price increase on Class III milk in California of \$1.84
15 per hundredweight. Applying that increase to the annualized
16 production of the aforementioned three cheese plants, would
17 increase their combined cost of milk by \$196.5 million per
18 year. It is unrealistic to believe an increase of such
19 magnitude could be absorbed without threatening their
20 viability. If you assume cheese is typically worth \$1.60 to
21 \$1.70 per pound, and ten pounds of milk is required to make one
22 pound of cheese, then a \$1.84 increase in the cost of milk
23 represents 18.4 cents per pound of cheese, or more than ten
24 percent of the cheese's gross value.

25 In that I debated including, but in my experience, if a

1 cheese operation were able to generate earnings of five
2 percent, that would be excellent performance. And if cheese is
3 \$1.60, five percent represents 8 cents a pound. So cheese, a
4 good cheese plant can generate 8 cents a pound of profit. This
5 proposal is requesting 18 cents per pound of cheese just to put
6 it in perspective.

7 That cost increase is so large, it would likely place
8 California cheese plants, especially high volume, low margin
9 plants, in a difficult position just to justify their continued
10 operation. Since Class 4b accounts for almost half of the milk
11 in the state, disorderly marketing conditions would inevitably
12 ensue.

13 BY MR. ENGLISH:

14 Q. Let me stop you just for one second. Are we now, have
15 you now identified information that relates back to the table
16 on page 15 of 19?

17 A. Yes.

18 Q. The plants that -- is that what you are referring to?

19 A. Yeah, I'm just showing the importance, you know,
20 there's just three individual cheese plants, and the importance
21 that they are to California and what the impact would be on
22 just those three plants if this Proposal 1 were to go through.

23 Q. And how is it you know what those three plants size is?

24 A. It came from the background information provided by the
25 California Department of Agriculture for the June 3rd hearing

1 of this year.

2 Q. So you are not just pulling it out of thin air --

3 A. No, not at all.

4 Q. You got it from CDFA?

5 A. Right.

6 Q. Okay. So why don't you continue then with your
7 statement on the bottom of page 16?

8 A. Cooperative organizations control the vast majority of
9 milk in the state. And I have heard testimony that's 75 or 80
10 percent. They have more than enough bargaining power to
11 negotiate prices with their customers that are reflective of
12 the market conditions that exist in California.

13 ARGUMENTS IN CONSIDERATION OF A FEDERAL ORDER.

14

15 - The argument disorderly marketing exists in
16 California is false.

17

18 - The argument that California is losing dairy farms at
19 a faster rate than the rest of the country is false.

20

21 - The argument that California milk production is
22 declining because cows are leaving the state is
23 false. (The 2015 decline is due almost entirely to
24 lower production per cow.)

25

1 - The argument that producers in other parts of the
2 country have caught up to California's production
3 proficiency is false. (It may be true in isolated
4 cases, but not in general.)

5
6 - The argument that California producers have not been
7 listened to, is false. (There have been seven hearings
8 in five years and the Secretary established the Dairy
9 Future Task Force to address their concerns.)

10
11 - The argument that depooling does not benefit Federal
12 Milk Market Order buyers is false. Mr. Wegner of
13 Land O'Lakes confirmed that in previous CDFA testimony.

14 JUDGE CLIFTON: You left out the word "hearings" so go
15 ahead and say that "he confirmed that in --"

16 MR. DRYER: -- he confirmed that in previous CDFA hearing
17 testimony.

18 JUDGE CLIFTON: Thank you.

19 MR. DRYER: Thank you.

20 - The argument that California cheese plants can afford
21 to pay the same price as those in the Midwest is false,
22 given the cost of doing business in California
23 including transportation of product to the population
24 centers in the East. It costs about 12 cents per pound
25 to ship cheese from California to the Midwest and about

1 16 cents to the East Coast.

2 For the last five years that USDA NASS surveyed and
3 reported Dairy Product Prices, Minnesota and Wisconsin cheddar
4 block prices averaged about 9 cents higher than those of other
5 states. See that in the following chart.

6 BY MR. ENGLISH:

7 Q. So the following chart is on page 18, and why don't you
8 tell us what this chart shows and where you got the
9 information?

10 A. When NASS reported cheese survey prices and it, I think
11 it was March of 2012, had switched over to AMS, but back when
12 they reported they did three prices; they did the
13 Minnesota-Wisconsin, other states, and the average of all of
14 the regions. So what this chart depicts, the blue bars are the
15 Minnesota-Wisconsin cheddar block prices; the other states are
16 obviously all the other states reporting. And then the line,
17 that green line is on the other axis, just depicting the
18 difference between the two. And over that period of time, 8.73
19 cents, almost 9 cents a pound higher price in Minnesota and
20 Wisconsin than the rest of the country.

21 Q. And is it your view that within other states
22 California --

23 A. Would be a major influence.

24 JUDGE CLIFTON: I'm sorry, you were both talking at the
25 same time and I have no idea what the evidence is. Start again

1 with your question, Mr. English.

2 BY MR. ENGLISH:

3 Q. I was saying, in the other states category, in your
4 professional opinion based upon your work for Saputo, what role
5 is California of the other states number?

6 A. California is in the other state's number and it is the
7 second largest cheese producer to date. So I imagine that to
8 be current.

9 Q. And the second largest to what state?

10 A. Wisconsin.

11 Q. So Wisconsin's in the, already in the other bar, so by
12 definition, California is the largest in remains in the red,
13 correct?

14 A. Correct.

15 Q. Anything else you want to talk about that chart?

16 A. I think it is self-explanatory.

17 Q. Thank you, sir.

18 A. - The inference that California producers under the
19 California systems make less net income than their
20 Western counterparts is false.

21

22 - The idea that mega cheese plants consuming oceans of
23 milk can compete on milk price with specialty plants
24 buying small volumes of milk is false.

25

1 - The argument that the Federal whey factor more
2 appropriately values whey than California's whey factor
3 is highly debatable.

4
5 - The notion that California's milk production will
6 decline to the point it cannot supply the fluid market
7 is false. (Just three cheese plants in California
8 process almost double the amount of milk needed to
9 supply the declining market.)

10
11 - The argument that raising the 4b milk price by one
12 or two dollars a hundredweight will discourage dairy
13 farms from converting to almonds, which, according to
14 testimony, returns the equivalent of, return the
15 equivalent of \$40 per hundredweight, is false.

16 JUDGE CLIFTON: I would like to insert what you included in
17 your testimony there, Mr. Dryer. In the top line when you say
18 by one or two dollars, you inserted per hundredweight. Should
19 we insert that on the record copy?

20 MR. DRYER: I think that's more appropriate, yes.

21 JUDGE CLIFTON: All right. So on page 19, Ms. Elliott, top
22 line, we'll insert "per hundredweight" and it will look just
23 like it does in the last line of that paragraph. Two words.

24 MS. ELLIOTT: Okay.

25 JUDGE CLIFTON: So we're inserting it just after the word

1 "dollars" and before the word "will". And Mr. Dryer, I would
2 like you to read that sentence again, please.

3 MR. DRYER: The argument that raising the 4b milk price by
4 one or two dollars per hundredweight will discourage dairy
5 farms from converting to almonds, which, according to
6 testimony, return the equivalent of \$40 per hundredweight, is
7 false.

8 To establish a Federal Order, especially one that
9 specifies unprecedented mandatory pooling, would put
10 proprietary plants in an untenable position, rendering them
11 unable to compete effectively with Cooperatives who have
12 pooling and pricing flexibility under the Orders. California's
13 dairy industry needs both processors and producers,
14 cooperatives and proprietaries. If USDA decides to recommend a
15 Federal Order, Saputo supports only the proposal submitted by
16 the Dairy Institute of California which provides for voluntary
17 pooling and milk prices based on western product prices, among
18 many of the other provisions.

19 And that concludes my testimony.

20 MR. ENGLISH: Your Honor, I have a some additional direct.
21 And I guess the major question I have at this point is, we have
22 been going for about an hour and 55 minutes, and then we passed
23 out, a handout, but and I'm wondering if the court reporter
24 needs a break.

25 JUDGE CLIFTON: Oh my goodness, it is one minute to 4:00.

1 Please be back and ready to go at 4:15.

2 (Whereupon, a break was taken.)

3 JUDGE CLIFTON: We're back on record at 4:16. Mr. English?

4 MR. ENGLISH: Thank you, your Honor.

5 BY MR. ENGLISH:

6 Q. So I just have a couple of questions before asking to
7 move the exhibits and then make the witness available for
8 cross-examination.

9 Let's look at page 4 of Exhibit 91 for a moment. So
10 anticipating maybe clearing a few things up ahead of time, as
11 Mr. Beshore has noted, you know, depooling tends to occur when
12 the relative price of manufactured products is higher than the
13 blend price, and then the result is that rational business
14 persons make decisions about whether they are going to
15 contribute into the pool for that month, correct?

16 A. Correct.

17 Q. So that's still a relevant point, because when those
18 circumstances occur, if California has mandatory pooling, you
19 would be unable to take advantage of that even as competitors
20 are not making those payments to the pool in Federal Order
21 areas, correct?

22 A. Correct.

23 Q. Now, the flip side is, what you are talking about in
24 the middle of that paragraph on page 4 is, you said imagine
25 what would have happened if mandatory pooling had existed

1 across the country this past spring, and you had situations
2 that Mr. Suever discussed earlier, correct?

3 A. Correct.

4 Q. What you really mean there is, given the way the system
5 would work with mandatory pooling, there would be mandatory
6 pricing, correct?

7 A. Yes.

8 Q. And therefore, product could not, under those
9 circumstances, be sold at dollars below class price as was
10 recorded in Dairy Market News earlier this year, correct?

11 A. That was my understanding, yes.

12 Q. So that is what you really mean in that statement on
13 page 4, correct?

14 A. That's right.

15 JUDGE CLIFTON: Mr. Dryer, I'm not getting enough volume
16 so --

17 MR. DRYER: I'll speak up, your Honor.

18 JUDGE CLIFTON: That's perfect. Thank you.

19 BY MR. ENGLISH:

20 Q. All right. Now, turning to Exhibit 93, which was,
21 first of all, you quoted it in your statement, correct?

22 A. That's right.

23 Q. And to the extent you quote it in your statement, you
24 agree with the statement that you quoted, correct?

25 A. I do, yes.

1 Q. And part of what you are saying is, look, it's not just
2 me, other people are saying it, correct?

3 A. That's right. And I'm saying partially that it's a
4 problem across the country for cheese makers.

5 Q. And you have, Saputo has those businesses across the
6 country, correct?

7 A. That's right.

8 Q. Is Saputo a member of Wisconsin Cheese Makers
9 Association?

10 A. Yes, we are.

11 Q. Did you have an opportunity to have any input into what
12 is listed as Exhibit 93?

13 A. I was involved in conversations -- but --

14 Q. But nonetheless, do you, on behalf of Saputo, endorse
15 its contents?

16 A. I do.

17 Q. Your Honor, I move admission of Exhibit 91, 92, and 93,
18 and the witness is available for cross-examination.

19 JUDGE CLIFTON: Thank you. Let us deal with the exhibits
20 first. Does anyone wish to question Mr. Dryer before
21 determining whether you have any objection to Exhibit 91? No
22 one does. Are there any objections to the admission into
23 evidence of Exhibit 91? There are none. Exhibit 91 is
24 admitted into evidence.

25 /////

1 (Thereafter, Exhibit 91 was
2 received into evidence.)

3 JUDGE CLIFTON: Does anyone wish to question Mr. Dryer
4 regarding Exhibit 92? Are there any objections to 92 being
5 admitted into evidence? There are none. Exhibit 92 is
6 admitted into evidence.

7 (Thereafter, Exhibit 92 was
8 received into evidence.)

9 JUDGE CLIFTON: Regarding Exhibit 93, does anyone wish to
10 question Mr. Dryer about that one?

11 MR. BESHORE: Yes, Marvin Beshore.

12 Good afternoon, Mr. Dryer. I just want to make sure I
13 heard you correctly in response to Mr. English with respect to
14 Exhibit 93, you had nothing to do with its preparation?

15 MR. DRYER: No, I had nothing to do with its preparation.

16 MR. BESHORE: Thank you very much.

17 JUDGE CLIFTON: Yes, thank you, Mr. Beshore. It's true
18 that the volume from his voice was so low it was hard to
19 distinguish, so, thank you. All right.

20 Is there any objection to the admission into evidence
21 of 92 -- to 93?

22 MR. BESHORE: Yes, I do object to the admission of 93. It
23 is a bit of a special situation. This is not notice to kind of
24 rule making, it is on the record rule making. This was a
25 document that he didn't prepare, that was submitted by an

1 association in a notice a comment proceedings separate from
2 this. He's quoted from it, that's fine, in his testimony, but
3 it should not be received in the record as if it were, as if
4 this were a noticing comment of proceeding. The author is not
5 here to be examined in any way, and it's kind of a backdoor, a
6 bunch of testimony that is uncross-examinable and submitted in
7 a different proceeding, so I object to it.

8 MR. ENGLISH: Your Honor, the witness has indicated that
9 they are a member the organization, and yes, he didn't author
10 it. But I asked him does he endorse it, and I could ask
11 further does he agree with it and does he effectively adopt it
12 as his own?

13 MR. DRYER: Yes.

14 MR. ENGLISH: In which case, he's subject to
15 cross-examination, and he is a member of the organization, and
16 I think it is entirely appropriate, the Rules of Admission in
17 these proceedings, as we well know, especially as to people
18 being of legal opinions, are a little different. And it may go
19 to the weight of the document, but I don't think it goes to
20 admissibility under these circumstances when the witness says
21 he has endorsed it and adopts it.

22 JUDGE CLIFTON: Was this available on any website,
23 Mr. English, prior to today?

24 MR. ENGLISH: Yes, it is. Is it not? I believe you can go
25 to this docket number, like any docket number, and you can pull

1 it out like any docket number, and it is available online. So
2 this witness can say he relied on it, like other witnesses have
3 relied on materials, for the number of years this witness has
4 been involved in the dairy industry. So I think it is also a
5 908 issue.

6 MR. BESHORE: Again, this is quite different than many
7 other exhibits that have being presented here. I could
8 present, for instance -- if I just brought up here any
9 publication or submission on this 610 docket, or any other
10 docket, by the National Milk Producers Federation, of which my
11 clients are members, and we said, and I just said to
12 Mr. Hollon, "You endorse them?" "Yes." "Adopt them?" "Yes."
13 We could have stacks of, you know, of submissions like this
14 from other, from trade associations, you know, not presented as
15 testimony, but being put into the record as if they were
16 presented as testimony. And it just, it defeats the purpose
17 and the function of an on the record rule making proceeding.
18 He didn't prepare it. And just to say he endorses it -- now,
19 it is in the record as something that I have to, that is going
20 to be accepted for -- for whatever it proves, unless we
21 cross-examine him. It's -- it's something that we can't --
22 it's beyond a pickle of how we need to make a record in this
23 proceeding, your Honor. And I -- it's a special case. I don't
24 think I have objected to anything else that's come up here yet,
25 but I just think we can't have this kind of thing, or the door

1 is opened to literally libraries of files that may be available
2 on the Internet because they are at
3 regulations.gov.rulemakingproceedings.

4 JUDGE CLIFTON: To me it seems directly on point with
5 regard to the issues of component pricing that need to be
6 considered here. It's only one viewpoint.

7 MR. BESHORE: It's not a relevance issue.

8 JUDGE CLIFTON: Well, why do you feel so unable to
9 cross-examine with regard to its contents?

10 MR. BESHORE: Well, I could cross-examine him about a
11 document that he hasn't prepared, hasn't read into the record,
12 has not testified to except saying "I like it, I endorse it,"
13 but I don't think, you know, I don't think that's the way this
14 hearing has been going or should be going. Literally, this is
15 okay, nine pages. I mean, it could be 30, it could be 50. I
16 think it could be adopted in the same way and pertain to topics
17 that we're discussing here. And I just don't think that's
18 appropriate to, and to have the burden that, on me, as a
19 non-proponent, or us, to cross-examine someone about the whole
20 thing? I object.

21 MR. ENGLISH: I can have him read it in the record, your
22 Honor, and he can say it is his testimony. And what I'm doing
23 is trying to save the record that burden. I would note that
24 every single table is sourced to USDA data, which is something
25 that a lot of people have done. I said, I asked the witness

1 more than endorse, I asked whether he adopted it as his own.
2 And he is available for cross-examination. And, you know, it's
3 really, I think, ultimately not much different from what he's
4 said, it is more of the same. And I think that under the
5 circumstances, it is admissible.

6 MR. DRYER: Might I say that in my testimony I said that
7 the other solids factor in the Federal formula was a problem
8 for other cheese makers, and that was part of my thinking, and
9 including this, because it demonstrated that the fact that
10 other cheese makers were appealing to the USDA about that
11 problem.

12 MR. ENGLISH: And you are also one of those other cheese
13 makers outside of California?

14 MR. DRYER: Yes, as a member of Wisconsin cheese makers.

15 JUDGE CLIFTON: Mr. Vetne?

16 MR. VETNE: Mr. Dryer stole half my thunder.

17 JUDGE CLIFTON: Isn't he wise?

18 MR. VETNE: Okay. There is no issue as to the authenticity
19 of this document. There's no issue as to the relevance of the
20 information in this document. As I understand it, the only
21 issue as to portions of this document is in the nature of
22 hearsay, somebody else who made this said these things, and
23 they can't be cross-examined. But the raw data in this
24 document comes from Federal Government sources. That's the
25 kind of information that people reasonably rely upon and which

1 we do here.

2 But the purpose of this exhibit, the underlying purpose
3 is there is a problem in the whey formula. We have a problem
4 in California, other cheese makers have a problem for the same
5 reason in other parts of this country. The fact that this
6 document exists and was submitted to the USDA and is authentic,
7 demonstrates that the voice of the problem is being expressed
8 in other parts of the country. For that purpose, it is not
9 even hearsay. Even if it were hearsay, of course, in an
10 Administrative proceeding, the rule is, you should exclude
11 types of evidence upon which reasonable persons should not
12 ordinarily rely. This does not fall in that category. It may
13 be subject to some weighting caution to the extent it doesn't
14 contain, to the extent parts of it contain argument, maybe,
15 rather than raw data, but that's all. Thank you.

16 JUDGE CLIFTON: All right. Over objection, I admit into
17 evidence Exhibit 93. Mr. Beshore's objection is
18 understandable, and the persons making a recommendation to the
19 Secretary can, of course, take that into account as they
20 evaluate what to do with the document.

21 I think the cross-examination with regard to the issues
22 in the document will be easier if it's, in fact, part of the
23 record. I realize it would be part of the record even if I
24 rejected it, but I'm going to accept it.

25 I know these are difficult issues, and what is true in

1 Wisconsin may not be true in California. But even just some of
2 the reasoning here and some of the vocabulary may be of some
3 use. So that's my reason for accepting into evidence
4 Exhibit 93, over objection. All right.

5 (Thereafter, Exhibit 93 was
6 received into evidence.)

7 JUDGE CLIFTON: Now, I realize, you know, we could spend a
8 lot of time with regard to the issues raised here, but I think
9 it's an important issue. So it's now 4:30, let's begin
10 cross-examination of Mr. Dryer. And who would like to go
11 first? Mr. Beshore?

12 CROSS-EXAMINATION

13 BY MR. BESHORE:

14 Q. Thank you, your Honor. And good afternoon again, Mr.
15 Dryer.

16 A. Good afternoon.

17 Q. I want to begin by learning a little bit, attempting to
18 learn a little bit more about Saputo and your role, your role
19 at Saputo, and understanding that that's the basis for your
20 testimony here today, really, your experience with Saputo and
21 your knowledge of its operations. Is that a yes?

22 A. Yes.

23 Q. You're nodding. We need to -- you need to articulate.

24 A. It's part of my role to be here, of course,
25 representing Saputo.

1 Q. Okay. So I would like to ask to be marked as the next
2 consecutively numbered exhibit, a one-page document which we
3 printed this morning from the Saputo USA Food Service website.
4 And I'll give you one, Mr. Dryer.

5 JUDGE CLIFTON: Ms. Elliott, I'm planning to mark this as
6 Exhibit 94.

7 MS. ELLIOTT: Yes.

8 JUDGE CLIFTON: This shall be Exhibit 94.

9 (Thereafter, Exhibit 94 was marked
10 for identification.)

11 JUDGE CLIFTON: If you do not yet have a copy of Exhibit 94
12 and want one, would you raise your hand?

13 BY MR. BESHORE:

14 Q. Okay. So, Mr. Dryer, what I liked about this and the
15 reason I printed it and wanted to have here, and what I liked
16 about the exhibit was, it -- it gives us a map and gives us a
17 list of Saputo plants.

18 A. Saputo cheese plants.

19 Q. Saputo cheese plants.

20 A. Saputo cheese division plants.

21 Q. Okay. So by making that distinction, you are saying it
22 doesn't including any of the Class II, the Morning Star
23 acquisition plants?

24 A. Correct.

25 Q. But in terms of cheese plants, it's current and correct

1 and depicts Saputo cheese operations, correct?

2 A. Appears to.

3 Q. Okay. So, let's talk about California first. Plants
4 are listed the middle of the page, you have, I think there are
5 five cheese plants in California.

6 A. Five.

7 Q. Okay. And they are alphabetically listed. Newman,
8 California, can you tell us about that plant? What products it
9 produces?

10 A. Primarily Mozzarella and provolone.

11 Q. And can you tell us anything about the size of the
12 plant?

13 A. I was cautioned to be careful not to --

14 JUDGE CLIFTON: I need that microphone to be closer to you.
15 Can you raise it up a little?

16 MR. DRYER: I was cautioned to be careful about disclosing
17 information about specific of our operations, since we're a
18 public company. And given my age and longevity, I can't afford
19 a long prison sentence, so I can't share specifics that aren't
20 in the public domain, that haven't been given to the market.

21 BY MR. BESHORE:

22 Q. Okay. On page 15 of 19 on Exhibit 91, you referenced,
23 in the first line of the graph on that page, you sort of put
24 cheese plants into two categories, bulk, or at least as I
25 understand it, it was referencing sort of two product sets at

1 least, bulk products, which come from the big plants, I take
2 it; is that correct?

3 A. Well, bulk products can come from any plant, but
4 obviously from the big plants, yes.

5 Q. Okay. And then smaller specialty plants on the other
6 hand?

7 A. Yes.

8 Q. Okay. Can you tell us which category that your Newman,
9 California plant would be in?

10 A. I think most of our California plants would be
11 considered bulk plants.

12 Q. Okay.

13 A. I think the industry is structured in a way to
14 accommodate the diminishing milk supply, so you need to be able
15 to process quite a bit of milk.

16 Q. Okay. Let's learn a little bit about the other plants.
17 South Gate, California, what products does that --

18 A. That particular plant I would not categorize as a bulk
19 plant, that plant produces string cheese.

20 Q. String cheese. Okay. So I was, again, reading and
21 trying to learn about Saputo. Reading in, I think it was
22 Dunn and Bradstreet Report that your -- you have a brand of
23 line of string cheese which is the number one in the country;
24 is that correct?

25 A. That's correct.

1 Q. And that's the Frigo brand?

2 A. That's correct.

3 Q. And is that made at South Gate?

4 A. Part of it is.

5 Q. Okay. And let's go then, to the Tulare, three plants
6 in Tulare. Can you tell me about those and whether they are
7 bulk or specialty, and whether they are products --

8 A. Two of those are cheese plants that produce bulk,
9 primarily Mozzarella, and one is a packaging, shredding, dicing
10 operation.

11 Q. So the packaging operation does not process raw milk.

12 A. Correct.

13 Q. Try to wait until I'm done. Sometimes I hesitate.

14 A. Sorry.

15 Q. But two plants at Tulare do make bulk cut Mozzarella?

16 A. Correct.

17 Q. Okay. So let's move then to your plants in the
18 Upper Midwest. And looking at, looking at Exhibit 94, there's
19 a plant in the East, or what seems to be a plant marketer, one
20 of those gold designations that designates plants, but that, is
21 that the Hancock, Maryland location that's been closed?

22 A. That's correct.

23 Q. Okay. So you don't actually have a plant in the East
24 anymore, right?

25 A. That's correct.

1 Q. Just a distribution center in Allentown?

2 A. That's right.

3 Q. Okay. So you, in the United States you manufacture
4 cheese in California and in the Upper Midwest, primarily
5 Wisconsin, as well as one plant at Big Stone, South Dakota?

6 A. And that plant is an aging packaging plant, it does not
7 take milk.

8 Q. Okay. Helpful. Good. So your processing plants are
9 either California, the ones that take raw milk in and make
10 cheese, are either in California or Wisconsin?

11 A. That's right.

12 Q. So let's talk about the Wisconsin plants.
13 Almena, Wisconsin, what -- can you describe that plant and what
14 it makes?

15 A. We make blue cheese and harvest Italian style cheeses
16 there.

17 Q. Is that a bulk or a specialty plant?

18 A. You know, they, in Wisconsin they categorize, they have
19 a categorization of specialty cheeses. And it's very, to me,
20 specific, and it doesn't include all the cheeses that I would
21 consider specialty. But I think gorgonzola is definitely
22 considered a specialty. Some of the hard Italian styles are a
23 specialty. To me it's a specialty plant, the products that it
24 makes.

25 Q. But it -- it's not considered a specialty in Wisconsin,

1 is that what you are saying?

2 A. I'm saying that they publish a report of specialty
3 cheese production in Wisconsin and has a fairly narrow
4 definition of specialty.

5 Q. Okay. But in the way you have used it in 91, this
6 would be a --

7 A. Yeah, it would be specialty.

8 Q. Okay. Black Creek, Wisconsin?

9 A. Again, that would be specialty. We're doing some
10 varieties that are considered not specialty, but it is strictly
11 cheddars we produce are aged. We do snack cheeses and other
12 varieties, so it is specialty in my mind.

13 Q. But it includes cheddar?

14 A. Cheddar, but only, you know, table cheddar, aged
15 cheddar, not bulk cheddar.

16 Q. Not bulk cheddar. Okay. Fond du Lac, Wisconsin.

17 A. Blue cheese.

18 Q. Specialty or bulk?

19 A. To me, that's a specialty product.

20 Q. Is it Green Bay, Wisconsin?

21 A. That's a packaging facility.

22 Q. Not a processing facility?

23 A. Right.

24 Q. Lena, Wisconsin?

25 A. String cheese.

1 Q. Is that some of the Frigo --

2 A. Yes.

3 Q. -- variety also? Frigo labelling?

4 A. Correct. Among others.

5 Q. So, your string cheese, what type of cheese is that?

6 A. It's made from Mozzarella, basically.

7 Q. So you make Mozzarella and cut it, and package, and
8 wrap it and package it into the string variety?

9 A. It is extruded so it creates the stringy texture, and
10 so it is handled a special way.

11 Q. So it is produced directly through extrusion?

12 A. Extrusion, then that runs through extrusion process.

13 Q. Okay. Mayville, Wisconsin?

14 A. That's a warehouse-type facility.

15 Q. Not --

16 A. Not a milk plant.

17 Q. Monroe, Wisconsin?

18 A. Whey plant.

19 Q. Reedsburg, Wisconsin?

20 A. That's a Mozzarella facility. We make a premium
21 Mozzarella product there and some fresh Mozzarella.

22 Q. Waupun, Wisconsin?

23 A. That's a large manufacturing facility for Mozzarella
24 and provolone and it has whey processing capabilities.

25 Q. Going back to the California plants. Do you have whey

1 processing capability in any of those plants?

2 A. We have consolidated that into our Tulare plant on
3 Paige Street.

4 Q. So whey processing in California is at the one in
5 Tulare location?

6 A. Yes.

7 Q. Okay. And what, there are multiple whey processing
8 locations in Wisconsin, Waupun and Monroe?

9 A. Monroe doesn't have drying capability. It produces a
10 condensed whey product and Waupun is our one drying facility
11 there.

12 Q. Okay. Now, are you, do you currently have -- have any
13 responsibilities for the milk supply arrangements into any of
14 the facilities?

15 A. In my past I had, but I don't now.

16 Q. I was looking at, again, some prior testimony, and I
17 think at one time you testified, maybe back in, I don't know,
18 it was '07, '08, I'm not sure, that you were responsible at
19 that time for the milk supply of the 21 plants? Does that
20 sound right?

21 A. That's correct.

22 Q. What periods of time were you responsible for milk
23 supply into those plants?

24 A. Really, from probably 1998 to perhaps three or four
25 years ago I stopped.

1 Q. Okay. During -- and your responsibilities included
2 both California and down in Wisconsin, I take it?

3 A. That's correct.

4 Q. Are you familiar with the cost of milk to those, to
5 those plants currently?

6 A. Yes.

7 Q. Both in California and Wisconsin?

8 A. Yes.

9 Q. Okay. And of course, you were familiar during times
10 you were responsible for it?

11 A. Very much so.

12 Q. Okay. On a per hundredweight basis, how much more are
13 you paying for milk to make cheese in Wisconsin than in
14 California, on average?

15 A. Again, I'd have to refer back to my caution about the
16 divulging specific information about our operations.

17 Q. Okay. You don't, you don't feel like --

18 A. You want me to comment on the Class III price versus
19 Class 4b price, I can do that.

20 Q. No, well, no, I'm interested in how much more milk the
21 farmers are paid for milk to make cheese in Wisconsin versus
22 California, in the Saputo, for the Saputo plant?

23 A. I would refer you to mailbox price information put out
24 by USDA.

25 Q. Okay. So you think that information is representative

1 of the --

2 A. Yes.

3 Q. Okay. Did you -- were you here when Mr. Hollon
4 presented that information?

5 A. I am not sure. I read part of his testimony, but I had
6 a gap in my presence here in a couple of weeks.

7 Q. Okay. Well, he attempted, maybe this will help you
8 remember if you were here or not. He went through some careful
9 calculations to make sure that he was standardizing or
10 comparing prices on the basis of the same tests and component
11 values and that sort of thing. Do you recall that?

12 A. No, I don't.

13 Q. Okay. That would be -- that would be something you
14 would want to do to compare prices, though?

15 A. If you wanted to be accurate.

16 Q. Okay. If you wanted to be accurate. It is pretty
17 important in this proceeding, wouldn't you say?

18 A. I would say.

19 Q. Okay. So if those -- if those mailbox price
20 comparisons consistently showed a, you know, a difference of an
21 excess of a dollar and sometimes in excess of two dollars per
22 hundredweight, you would agree that's within the range of your
23 experience?

24 A. That seems reasonable.

25 Q. Okay. So let me just -- if we can have that other

1 exhibit.

2 I have a one-page exhibit that I would like to ask to
3 be marked as the next exhibit number, which I believe would be
4 95, it's titled "Saputo Plants in Wisconsin and County Producer
5 Paid Price Premiums" as reported in Exhibit 60. I'm giving one
6 to Mr. Dryer.

7 JUDGE CLIFTON: Ms. Elliott, I believe this is Exhibit 95;
8 is that correct?

9 MS. ELLIOTT: That's correct.

10 JUDGE CLIFTON: Thank you. I'm marking mine as Exhibit 95.

11 (Thereafter, Exhibit 95 was marked
12 for identification.)

13 JUDGE CLIFTON: Please raise your hand if you need an
14 Exhibit 95. They have been distributed.

15 Mr. Beshore, you may proceed.

16 BY MR. BESHORE:

17 Q. Thank you. So were you here when Mr. Christ testified,
18 Mr. Dryer?

19 A. No, I listened to part of his testimony.

20 Q. Have you -- did you have a chance to see the Exhibit 60
21 which he presented, which was information he had, the
22 Market Administrator in Order 30 had prepared for him?

23 A. No, I did not.

24 Q. Well, all I have done here on Exhibit 95 is take the
25 information that was from the Market Administrator's data that

1 Mr. Christ presented, which had pay prices in Wisconsin
2 counties in 2008 to 2011, two months a year. And what's
3 slightly different from the mailbox price here, the
4 Market Administrator calculated the weighted average for all
5 the payrolls in the County, the weighted average premium over
6 the Federal Order price. Okay? Do you follow? And the ones
7 that we show here are where counties that the plants were
8 located and were reported, and they show a range, we just put
9 the low, the low -- the month that had the lowest over order
10 premium weighted average in that county, and the month that had
11 the highest. That's the information. So during this period of
12 time, 2008 through 2011, you were responsible for milk
13 procurement in these plants, correct?

14 A. Correct.

15 Q. Do those premiums conform to your experience in
16 purchasing milk in the -- for those plants in Wisconsin during
17 that time period?

18 A. I can't really respond to the accuracy of these
19 numbers, but, you know, they could be correct.

20 Q. I wasn't asking -- I wasn't trying to ask if they were
21 accurate. We know the Market Administrator prepared them from
22 all the payroll information they had and weighted them,
23 etcetera. I'm just asking if you recall, in your experience,
24 that these were the types of premiums that were paid to
25 producers?

1 A. Being paid in the market?

2 Q. Yes.

3 A. They seem realistic to me.

4 Q. Okay. On the other side of the country here in
5 California, we don't have that kind of pay price information,
6 we have mailbox information, but producers here start with a
7 substantially lower blend price and receive substantially lower
8 premiums, if any, correct?

9 A. Yes.

10 Q. Now, do the Saputo sell cheese products to national
11 accounts?

12 A. Yes.

13 Q. So are those accounts, some of those accounts, serviced
14 with product that's both manufactured in Wisconsin and in
15 California?

16 A. Yes.

17 Q. Sold at the same prices?

18 A. Typically not.

19 Q. Typically not? So you are selling cheese to somebody,
20 you don't charge, you charge them a different price for the
21 cheese that you make in Wisconsin and the cheese you make --

22 A. It's the location --

23 Q. Can you let me finish, sir, please?

24 A. I thought you were, sorry.

25 Q. You charge a customer a different price for the, let's

1 say Frigo string cheese that you make in California, than for
2 the Frigo string cheese that you make in Wisconsin?

3 A. I would say for a national customer there's a location
4 value to the cheese, so depends if, you know, if higher cost of
5 always getting the product in the market that has to be taken
6 into account in the price.

7 Q. So that's different for a national accounts you have
8 different delivered prices at different locations, is that what
9 you are saying?

10 A. I -- it's -- first, I'm not involved in sales, but I
11 believe that, yeah, that we have, in general, prices are
12 different emanating from the West than they are for the
13 Midwest.

14 Q. At customer delivered locations?

15 A. Yeah, because most of the market is East.

16 Q. All right. Do you sell any products FOB your
17 processing or packaging facilities?

18 A. I would say, yes.

19 Q. And for the same -- same product, same label, do you
20 charge the same prices for the same product, the same label in
21 Wisconsin and California?

22 A. I am a little uncomfortable in the area. I'm not
23 really an expert on pricing.

24 Q. Okay.

25 A. So I am a little uncomfortable. I don't want to make,

1 misstate.

2 Q. So you didn't actually have a responsibilities in that
3 area?

4 A. Not at all.

5 Q. Okay.

6 JUDGE CLIFTON: Mr. Beshore, will you please remember where
7 you are? Because you will be cross-examining this witness
8 tomorrow. And I would like to stop because we have a few
9 housekeeping items, including finding out what else is on the
10 agenda for tomorrow. Is that all right?

11 MR. BESHORE: That's fine.

12 JUDGE CLIFTON: All right. And Mr. Dryer, you had already
13 planned to be here tomorrow, I hope.

14 MR. DRYER: Yes, ma'am.

15 JUDGE CLIFTON: All right. For now, you may step down,
16 thank you so much. The first issue is whether we can leave
17 things exactly where they are in this room, and I would like
18 someone from USDA to speak to that.

19 MR. RICHMOND: Okay. So feel free to leave all of your
20 belongings here tonight, we intend to be the last ones out the
21 door. We have to lock them up so hopefully everything is here
22 in the morning.

23 JUDGE CLIFTON: So will your copy machine be okay out
24 there?

25 MR. RICHMOND: We're going to move the copy machine from

1 the hallway into the room so it is safe and sound.

2 JUDGE CLIFTON: All right. So that's wonderful news. The
3 second issue is, Mr. English, we -- was there something,
4 Mr. Beshore, about, oh, are you pointing to other doors that
5 need to be locked?

6 MR. BESHORE: No, I'm sorry, I was just looking to
7 Mr. English to give us the line up for tomorrow.

8 JUDGE CLIFTON: Me too, looking to him.

9 MR. ENGLISH: Chip English. So, your Honor, we didn't get
10 through the list today. And Mr. Dryer, who did have something
11 else to do tomorrow, has decided that he's going to return here
12 tomorrow. So we would like to complete Mr. Dryer tomorrow.
13 And then after that, we would like to put Mr. Newell on the
14 stand for HP Hood, for a relatively short statement, similar
15 length as Mr. Suever, on the issue of orderly marketing.

16 After that, I think it depends a little bit on the
17 timing, because I have two witnesses, and I am confident I'm
18 not going to get them both done. So I think I'll put one of
19 these two on tomorrow and depends a little bit on what I think
20 is going to happen. Part of it is one of them doesn't live
21 here. Rob Blaufuss for Dean Foods, and James DeJong, actually,
22 I wouldn't be the one putting him on, I think Mr. Vetne will
23 be, but we would have, for Dairy Institute of California,
24 those, one of those two. I doubt we'll have both. And since
25 Mr. Blaufuss does have a plane to catch tomorrow, I would

1 probably suspect it is going to be Mr. DeJong, but that hasn't
2 been decided yet. So we're working on it and that's where we
3 are. And I know there is no chance we can finish all four
4 tomorrow.

5 JUDGE CLIFTON: All right. We have another gentleman who I
6 believe will be testifying tomorrow, am I correct? No? Not
7 necessarily tomorrow?

8 MR. ENGLISH: No, not tomorrow. Monday.

9 JUDGE CLIFTON: Next week. Okay. Good. All right. What
10 other questions or announcements does anyone want to make?
11 None.

12 All right. I will see you here tomorrow, we'll go on
13 record at 9:00, and we now go off record at 4:56.

14 (Whereupon, the evening recess was taken.)

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