

**CERTIFIED
TRANSCRIPT**

NATIONAL FEDERAL MILK MARKETING ORDER
PRICING FORMULA HEARING

DOCKET NO.: 23-J-0067; AMS-DA-23-0031

Before the Honorable Jill Clifton, Judge

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Carmel, Indiana

January 19, 2024

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Reported by:

MYRA A. PISH, RPR, C.S.R.
Certificate No. 11613

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16 FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

17 Steve Rosenbaum

18 FOR THE AMERICAN FARM BUREAU FEDERATION:

19 Dr. Roger Cryan

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21 (Please note: Appearances for all parties are subject to
22 change daily, and may not be reported or listed on
23 subsequent days' transcripts.)

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1 FRIDAY, JANUARY 19, 2024 - - MORNING SESSION

2 THE COURT: All right. We're back on record.

3 It's 2024, January 19, it's a Friday, and it's
4 approximately 8:13 in the morning.

5 I have been handling some items that were on my
6 mind off record, and now we will begin officially.

7 This is day what of this proceeding?

8 (Court Reporter response.)

9 THE COURT: 47. All right.

10 And are we -- let's talk on the record about the
11 fact that we will be stopping the proceeding at 3:30 p.m.,
12 meaning no further testimony beginning 3:30 p.m., so that
13 we can break down and vacate this room. It's required for
14 a different event.

15 Is there anything else preliminary to resuming
16 Dr. Velez's testimony? I see nothing.

17 You may take the witness stand again, Doctor.

18 Who would like to begin cross-examination? Is
19 there any cross-examination before I turn to the
20 Agricultural Marketing Service?

21 There is none. I invite the Agricultural
22 Marketing Service questions.

23 JUAN VELEZ, MV, MS, DIPL. ACT,

24 Having been previously sworn, was examined
25 and testified as follows:

26 MS. TAYLOR: Good afternoon.

27 THE WITNESS: Good after- -- morning.

28 MS. TAYLOR: Good morning. I'm already thinking



1 about the end of this day. I do want to thank you for
2 coming to testify today, but AMS doesn't have any
3 questions. Thank you.

4 THE COURT: Wow.

5 THE WITNESS: You make it early. Get out of here
6 early.

7 THE COURT: It could be.

8 Is there anything else that you thought of
9 overnight that you wanted to tell us?

10 THE WITNESS: Just one comment about balancing in
11 organic. And Ms. Garofolo explained a little bit about
12 how on the list of how Aurora has to balance supply.
13 About point number 4, is that call, to me, the producer,
14 about changing practices to reduce milk production when
15 supply was -- when we were a little bit oversupplied.

16 And that cost to us, the producer, is very
17 significant when we have to dry cows early, or change the
18 rations that the cows produce less. It has a tremendous
19 economic impact on the producer when processor has to call
20 you and tell you that you the one that have to do the
21 balancing.

22 And also, when it's the other way around, and
23 we're short, even though some people in the office in
24 utilization think that we do have a switch to turn the
25 cows on and off, that doesn't happen, and they expect me
26 to increase production by 5 or 10% in the next two weeks,
27 and that's not possible.

28 So it's a frustrating conversation, but we cannot



1 increase the supply and react as fast, so it can be done
2 when you have the inventory of --- in conventional
3 dairies. So for us, it's extremely difficult to do the
4 balancing at the farm levels.

5 I just wanted to add that. Thank you.

6 THE COURT: Thank you.

7 Are there any further questions for Dr. Velez?

8 CROSS-EXAMINATION (Cont'd)

9 BY MR. MILTNER:

10 Q. Ryan Miltner representing Select Milk Producers.

11 There's another rule of practice that no one can
12 get off the stand without one question being asked.

13 I would like for you, Dr. Velez, if you could
14 explain a little bit about why balancing, as a producer in
15 organic, is different from conventional, to your last
16 point.

17 A. Yeah. The supply is not -- is not managed by
18 inventories that could be stored and moved to different
19 places. Drying is not always available. Cheese
20 production is not always available when there's abundance,
21 when there's oversupply.

22 And when there is undersupply, like I said, we
23 manage a little bit through long shelf life products,
24 investing in storage, cold storage rooms, that are -- that
25 costs millions and millions of dollars, that helps balance
26 a little bit.

27 But I cannot pick up the phone and call a co-op to
28 give me more milk when I need more. It's not -- it's not



1 available. So, again, we have to go back to the producers
2 and tell them, "Help me balance. How can you reduce your
3 production right now so that you don't have to -- I don't
4 have to dump the excess milk?"

5 Q. So you were -- your statement in response to Judge
6 Clifton's invitation to -- to add something new, you said
7 that as a farmer there are things that -- that it's
8 difficult for you as a farmer when the plant calls and
9 says "reduce production."

10 How is that different than what that would be like
11 for a farmer who supplies a conventional plant directly?
12 Because it seems that a lot of that would be very similar
13 to me.

14 A. Yeah. My perception is that the conventional
15 farmer is always better off producing more hundredweights
16 a day no matter what. There is a contractual obligation
17 for somebody to take that milk. And the same is true,
18 that portion is true in organic, except that I believe
19 that in the conventional world there are ways to divert
20 that milk to other processing plants that could store that
21 product for a longer period of time.

22 And I don't -- I haven't experienced conventional
23 farmers telling me that they have got the call that they
24 have to do the balance at the farm, but I'm not -- I'm
25 just talking anecdotally.

26 Q. In your conversations with conventional farmers,
27 have they ever talked about base plans or -- or supply
28 plans that their co-op or -- or handler might have in



1 place?

2 A. No, I haven't.

3 Q. In your experience, have you ever talked with
4 anybody at a cooperative level who might say, "If we have
5 extra milk, it might be marketed at another outlet, but at
6 great costs of transportation or other costs"?

7 A. Yes, I have heard that. Yes.

8 Q. Okay. So there -- so there -- some of those
9 balancing costs for the farmer might be similar for a
10 conventional and organic. Would you agree?

11 A. Not in quantity. Because the outlets are a lot
12 closer, because there's a lot -- it's multiple outlets.
13 For us, for example, to find a way to divert that excess
14 milk, the transportation cost is excessive because we have
15 to go farther out.

16 Q. Is that a function of your plant location or farm
17 location?

18 A. It may be a function of both of those things. If
19 we want to go conventional prices, yes. I mean -- and
20 then sometimes like, Ms. Garofolo was explaining
21 yesterday, the cost of that is actually higher than what
22 we get paid for it if we go with the milk to a
23 conventional place.

24 Q. Right. Okay.

25 MR. MILTNER: Thank you very much.

26 THE WITNESS: Thank you.

27 THE COURT: Thank you so much, Dr. Velez.

28 THE WITNESS: Thank you.



1 THE COURT: You are excused. You are welcome to
2 stay.

3 MR. ENGLISH: Wait, wait, wait.

4 THE COURT: I forgot -- I forgot that we now have
5 redirect.

6 MR. ENGLISH: Just a couple questions based upon
7 the questions that were just asked.

8 REDIRECT EXAMINATION

9 BY MR. ENGLISH:

10 Q. I think what you are saying is that versus
11 conventional, for organic there are far fewer options to
12 dispose of surplus milk by the processor. That is to say,
13 there's less drying options, there's less cheese options,
14 correct?

15 A. That's absolutely right.

16 Q. And does organic -- does the organic fixed price
17 that you receive on the farm actually keep up with cost of
18 production?

19 A. Yes, it does.

20 Q. Thank you.

21 MR. ENGLISH: Oh, I would move admission -- I have
22 already moved admission. Now I ask for a ruling on 479.

23 THE COURT: Yes. Is there any objection to the
24 admission into evidence of Exhibit 479, also marked MIG
25 Exhibit 66?

26 There is none. Exhibit 479 is admitted into
27 evidence.

28 (Thereafter, Exhibit Number 479 was received



1 into evidence.)

2 MR. ENGLISH: Thank you, Your Honor.

3 I do think the witness can now be excused.

4 THE COURT: Yes. Thank you so much.

5 MS. VULIN: Your Honor, Ashley Vulin with the Milk
6 Innovation Group. We would call Jed Ellis with Shehadey
7 Family Foods to the stand, please.

8 And while he gets set up, I will let everyone know
9 we have distributed four documents, and everyone should
10 have copies, but we have extras if needed.

11 Your Honor, if you are ready, I'll ask that these
12 be marked.

13 THE COURT: That would be fine. Let's begin. You
14 already have the marking that the -- that's been assigned?

15 MS. VULIN: I believe so. So
16 Exhibit MIG/Shehadey-24 I believe is Exhibit 480.

17 THE COURT: And would you just spell Shehadey at
18 this stage?

19 MS. VULIN: Yes, Your Honor. S-H-E-H-A-D-E-Y.

20 THE COURT: Thank you.

21 (Thereafter, Exhibit Number 480 was marked
22 for identification.)

23 MS. VULIN: Next exhibit is
24 MIG/Shehadey-Exhibit 24A. We ask that that be marked as
25 Exhibit 481.

26 THE COURT: Yes.

27 (Thereafter, Exhibit Number 481 was marked
28 for identification.)



1 MS. VULIN: The next exhibit is
2 MIG/Shehadey-Exhibit 24B. We ask that that be marked as
3 Exhibit 482.

4 THE COURT: Yes.

5 (Thereafter, Exhibit Number 482 was marked
6 for identification.)

7 MS. VULIN: And the last one is MIG Exhibit 24C,
8 we ask that that be marked as Exhibit 483.

9 THE COURT: Yes.

10 (Thereafter, Exhibit Number 483 was marked
11 for identification.)

12 MS. VULIN: And, Mr. Ellis, the first two
13 documents --

14 THE COURT: Let me swear him in.

15 MS. VULIN: Yes. Of course. Thank you, Your
16 Honor.

17 THE COURT: Would you state and spell your name?

18 THE WITNESS: Jed Ellis, J-E-D, E-L-L-I-S.

19 THE COURT: And have you previously testified in
20 this proceeding?

21 THE WITNESS: Yes, I have.

22 THE COURT: You remain sworn.

23 MS. VULIN: Thank you, Your Honor.

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JED ELLIS,

Having been previously sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MS. VULIN:

Q. Mr. Ellis, the two documents that we first marked,
Exhibits 480 and 481, are these two documents your written
testimonies for this portion of the proceeding?

A. Yes, they are.

Q. And Exhibit 482 is the PowerPoint presentation
that you're going to give in a moment?

A. Yes.

Q. And then Exhibit 483 is a spreadsheet with cow
number data on it, correct?

A. Correct.

Q. Thank you.

So if we could bring up the slide show, please.
We had it for a moment.

THE COURT: Make sure you're securely connected.

MS. VULIN: Success.

THE COURT: I again applaud Dakota, he's been
invaluable. He's worked tirelessly at whatever needed to
be fixed.

So, thank you again, Dakota.

MS. VULIN: I second that.

BY MS. VULIN:

Q. So, Mr. Ellis, I know that you have testified
previously, but since we have had a fair number of



1 witnesses, I wanted to refresh everyone as to your
2 background.

3 Can you remind us of your role at Shehadey Family
4 Foods.

5 A. Yeah. Currently I'm the director of procurement,
6 basically negotiating for materials, ingredients,
7 packaging. I'm over bulk sales. We sell excess cream,
8 excess condensed skim. And I also help with our milk
9 procurement and acquisition of cream and raw milk and
10 such.

11 Q. And so when you say "milk procurement," that is
12 obtaining raw milk supplies from suppliers?

13 A. Correct.

14 Q. And how long have you been with Shehadey Family
15 Foods?

16 A. I have been with Shehadey for five years.

17 Q. And when did you get into the dairy industry?

18 A. I was kind of born into the dairy industry. My
19 grandpa and my dad were both -- spent their entire careers
20 in the dairy industry. So I grew up, you know, going
21 around with my grandpa to different acquisitions and plant
22 buildings or -- you know, plant builds. And with my dad I
23 grew up, you know, doing store sets and, you know,
24 merchandising, so...

25 And then I went to -- you know, after high school
26 I started merchandising myself, and as a full-time
27 employee of Dean Foods. And then eventually became a
28 sales rep for about four years before moving into the Dean



1 Foods area counting center in Salt Lake City. And I was
2 there for a few more years, then moved down to St. George,
3 Utah, and was a production supervisor at their ice cream
4 facility. Eventually moved to Shehadey Foods in their
5 finance and accounting department.

6 Q. Thank you.

7 And if you could bring up Slide 2, please. Can
8 you just remind us of some of the products that Shehadey
9 Family Foods manufactures.

10 A. So primarily we are a Class I fluid company. Our
11 plant in Fresno is primarily Class I. I mean, it does
12 process creams, half and half, you know, other -- you
13 know, other -- ice cream mixes.

14 Our plant in Fairfield, California is basically
15 all Class I with a little bit of half and half.

16 Our facility in Reno, Nevada, it is, you know,
17 same thing, pretty much Class I. It does have a little
18 portion packed creamer cups that it runs there, as well as
19 some whipping cream, and a lot of ice cream mix.

20 Then Umpqua Dairy in Roseburg, Oregon, which is
21 the newest member of the Shehadey Family Food companies,
22 it is Class I mostly, but it does also process ice cream,
23 ice cream mixes, cottage cheese, and sour cream.

24 Q. Thank you.

25 And if you want to go to the next slide, this will
26 help orient us to the location of your facilities.

27 Can you just walk us through again where they all
28 are, please.



1 A. Yeah. So as I said, we have four facilities that
2 are in three different states: Fresno, California;
3 Fairfield, California; Reno, Nevada; and Roseburg, Oregon.

4 Now, Fresno was, you know, the first -- the first
5 plant at Shehadey Family Foods, and then we acquired the
6 Fairfield facility, and then we acquired the Model Dairy
7 facility through -- through the Dean Foods bankruptcy, and
8 then it -- and then, lastly, the Roseburg, Oregon,
9 facility.

10 Q. Thank you.

11 And can you tell us a little bit about Shehadey's
12 milk supply. Primarily, do you purchase from
13 cooperatives, independent suppliers, a mix of both?

14 A. Yes. It's a little bit of both. So we buy
15 from -- mainly from cooperatives. Fresno does get about
16 25 to 30% of its milk supply from the Shehadey Family
17 Foods farm, I guess the -- you know, the -- it's a family
18 farm, right? And Fairfield and Reno and Roseburg are 100%
19 cooperative milk.

20 THE COURT: Are 100% what?

21 THE WITNESS: Cooperative milk.

22 BY MS. VULIN:

23 Q. Thank you.

24 And this map has some very helpful circles around
25 Shehadey's plants. Can you explain to us what those
26 indicate.

27 A. So that is a representation of the radius of our
28 average distance of our milk supplies. So, for example,



1 in Fresno on average, our milk comes from about 26 miles
2 away from our facility.

3 Q. So the Fresno facility has a fairly close
4 proximity to its milk supply?

5 A. Correct.

6 Q. And let's look at Reno, which I see is kind of a
7 half circle terminating at the border of the state.

8 Does all of the Reno facilities milk supplies come
9 from within the state of Nevada?

10 A. Correct. Most of it comes from Washoe and
11 basically Fallon, Nevada.

12 Q. And looking at the --

13 THE COURT: I'm sorry, so I caught your "yes" that
14 it comes from Nevada. And Washoe is a county?

15 THE WITNESS: Yeah, Washoe County is essentially
16 where most of it comes from.

17 THE COURT: And then what was the other location?

18 THE WITNESS: And then, you know, where the
19 plant -- you know, that area of Fallon, Nevada.

20 THE COURT: Fallon. Thank you.

21 MS. VULIN: Thank you, Your Honor.

22 BY MS. VULIN:

23 Q. And then looking to the Fairfield plant, it looks
24 like the milk supply's a little bit further than it is for
25 Fresno; is that right?

26 A. Correct.

27 Q. And I see the circle there encompasses the San
28 Francisco area.



1 Does Shehadey get milk from the San Francisco
2 area?

3 A. No. None of it comes through the -- none of it
4 comes through San Francisco. These rings are essentially
5 just a radius, but most of the milk from Fairfield will
6 come kind of east and south from -- from Fairfield.

7 Q. And does -- does any of the Shehadey's raw milk
8 supplies, do they travel through the San Francisco area?

9 A. They do not -- and I sure hope not, because none
10 of it's coming from anywhere remotely close to San
11 Francisco.

12 Q. And so then looking at the Roseburg plant, it
13 looks like that might be the furthest milk supply of the
14 four operations.

15 A. Correct. Roseburg used to primarily get milk from
16 Southern Oregon, from supply even further south than the
17 plant, that essentially if Roseburg didn't take it, it was
18 going to travel up to Portland. And recently there has
19 been a couple loads of milk here and there that has to
20 come from northern -- kind of the Northern Oregon,
21 Southern Washington area, but primarily it still comes
22 from Southern Oregon.

23 Q. And give us an overview if Shehadey Family Foods
24 needs to bring on new milk, either a new milk supply or
25 expand the milk supply from a current farm, how do you go
26 about doing that?

27 A. You know, right now we really -- you know, dealing
28 with the cooperatives, it's more or less just, you know,



1 putting orders in and then the cooperatives determine
2 where is that milk going to come from. We don't tell them
3 what farm, except if there's quality problems from certain
4 farms. But it's just the cooperatives determine what milk
5 we get and where it comes from.

6 Now, you know, in Fresno and Fairfield, I can tell
7 you that there are numerous other cooperatives that -- you
8 know, that are asking for business. And -- but we have
9 full supply agreements, and so we don't -- you know, we
10 don't real --

11 (Court Reporter clarification.)

12 THE WITNESS: Yeah, sorry.

13 So as I was saying, in Reno and Fairfield there
14 are additional cooperatives or milk suppliers that do ask
15 us to purchase milk from them, but because we have full
16 supply agreements, that's -- that's not an option.

17 BY MS. VULIN:

18 Q. And so when deciding essentially what the radius
19 is, other than for Fresno where Shehadey purchases some
20 milk with the associated Shehadey-owned family farm, you
21 don't really decide the distance that the milk travels to
22 get to the plant, that decision is made by your
23 cooperative suppliers?

24 A. Correct.

25 Q. So then if we could go to the next slide, please.

26 Can you tell us just generally from a big picture
27 sense, why does Shehadey Family Foods support Proposal 20?

28 A. We support Proposal 20 just, you know, we believe



1 that -- that the best way to -- for a healthy industry, is
2 to keep -- to keep the cost associated with moving raw
3 milk and receiving raw milk negotiated based upon
4 locations and supply and demand, and, you know, other, you
5 know, economic -- you know, kind of the regional
6 economics, right?

7 And so we feel that that is best kept to
8 negotiations. And -- and we feel that Proposal 20 will
9 help us to determine, you know, what should be the real
10 price of milk, where -- where should it go and help to,
11 you know, help us to innovate.

12 Q. Why did Shehadey join MIG?

13 A. We joined the Milk Innovation Group because we
14 felt like, you know, we needed to -- to go on record and
15 to get our voice heard that, you know, Class I is -- is
16 struggling. We need -- we need to be able to come
17 together to -- to be able to change the direction of this
18 industry and change the direction of Class I. Because,
19 you know, we're scared to be another statistic, you know,
20 another plant closure, another -- you know, job losses.
21 We just -- you know, we're concerned that that's the
22 future of -- we don't want to be -- we don't want to be
23 that.

24 Q. And why do you believe Class I faces -- or do you
25 believe Class I faces regulatory challenges not faced by
26 Classes II, III, and IV?

27 A. Well, as Shehadey Family Foods, we are -- all of
28 our facilities are well above the 25% threshold. So we



1 are -- you know, we are required to pool. We are required
2 to follow all the guidelines of those that pool, whereas
3 other classes can determine if it's financially, you know,
4 beneficial for them to pool or not pool. And so Class I
5 facilities, we, you know, kind of just -- you know, we
6 don't get a whole -- we don't get decisions on whether or
7 not it's beneficial.

8 Q. And Proposal 20 would reduce Shehadey's pool
9 obligation by \$1.60 per hundredweight, correct?

10 A. Correct.

11 Q. And so what impact would the reduction of the
12 \$1.60 in Shehadey's pool obligation have on Shehadey's
13 operations?

14 A. Well, our -- our intention would be to -- you
15 know, our intention would be to pay that \$1.60 back to the
16 milk supplier, to --

17 Q. Why?

18 A. Because we feel that those who are servicing us
19 should be the ones getting that money, instead of going to
20 a pool and getting diluted by, you know, other processors
21 that -- that were not involved in the transaction or in
22 the supply of Class I milk.

23 We -- we feel that if the purpose is to
24 incentivize people to do Class I milk, that's -- there's
25 another -- that's a big incentive right there.

26 Q. So let's start with the Grade A piece.

27 Are you -- I understand that Shehadey Family Foods
28 also manufactures non-Class I products, correct?



1 A. Correct.

2 Q. Are you aware of any non-Class I operation in any
3 of the markets in which you operate that receives Grade B
4 milk?

5 A. I am not.

6 Q. Does Shehadey ever accept Grade B milk for its
7 non-Class I products?

8 A. No, we do not.

9 Q. And then the second factor, balancing.

10 What are the ways in which Shehadey contributes to
11 balancing its milk supply?

12 A. So Shehadey Family Foods, you know, it's kind of a
13 variation based upon our -- our plant and the size of the
14 plant. But we receive milk seven days a week, even when
15 our facilities aren't running. We have increased our silo
16 capacities to receive excess raw milk. We give a
17 quarterly forecast on how many loads of milk we believe
18 we're going to need, which we are only allowed a certain
19 deviation from that. We provide -- going into the week,
20 we provide our -- our firm commitment on what we're going
21 to buy, and therefore, we know exactly what -- what we are
22 and not going to get.

23 Q. And you also have here, orders are placed in
24 advance with weekly forecast.

25 Can you tell us just a little bit about that
26 process, please.

27 A. Yeah. So most of it's based upon historical,
28 right? We -- we go back a year, we go back the last few



1 weeks, we determine what did we buy, what did we use, what
2 did we make, and we -- you know, we tell -- we tell our
3 providers, suppliers, how many loads we're going to need
4 each day of the week. And I think we're only allowed
5 to -- roughly we can move about -- we can cancel about
6 three loads is all the contract permits in Fresno, for
7 example. And so we -- we -- we're pretty committed to
8 what we tell them going into the week so --

9 Q. Sorry, say the last part.

10 A. We're pretty committed to whatever we told them
11 going into the week.

12 Q. How far in advance are those weekly forecasts set?

13 A. Like I said, we give them a quarterly forecast,
14 and then as we get closer to the week, it's typically the
15 Wednesday or Thursday before, we -- we send in -- you
16 know, we send in our amounts.

17 Q. So quarterly kind of foreshadowing of what you
18 expect, and then ongoing communication each week as to how
19 the next week is looking, correct?

20 A. Correct.

21 Q. And then you also have here that you already pay a
22 premium to suppliers for balancing.

23 Can you tell us about that, please.

24 A. Yeah. So each of our suppliers, we have different
25 premiums and I guess milk overages that we pay. Some are
26 lumped into just a flat premium; others are broken out by
27 different, you know, different pieces of a premium. But
28 to all three cooperative suppliers, there is a -- you



1 know, there is a premium which is either balancing is
2 called out in it or there's -- you know, implied in the
3 premium.

4 Q. And so there are ways in which Shehadey's
5 suppliers also contribute to balancing; is that right?

6 A. Correct.

7 Q. And do all of Shehadey's suppliers set the exact
8 same balancing charge?

9 A. No, they do not.

10 Q. And have any of Shehadey's suppliers explained why
11 they are charging Shehadey for balancing costs when the
12 Class I differential supposedly already includes \$0.60 for
13 balancing?

14 A. No, they never explained the dynamics behind it,
15 more or less just that they need to charge it.

16 Q. And given the increase in -- well, strike that.

17 Do you -- do you believe that Class I bears a
18 different balancing responsibility to the marketplace as a
19 whole as opposed to Classes II, III, or IV?

20 A. Well, I think in the sense that there's -- there's
21 already a prebuilt-in balancing charge in our differential
22 that, yeah, there is -- there is some there. We are also
23 charged higher premiums than -- than many, many of the
24 manufacturing classes are. And, you know, milk production
25 has grown where Class I production has decreased. And so
26 the added -- you know, we are being asked to pay for that
27 spread a little bit more, where, you know, we -- we don't
28 control the amount of milk in -- you know, in supply.



1 Q. And given the low level of Class I utilization, do
2 you believe it's fair that Class I bears the brunt of the
3 balancing costs with suppliers?

4 A. I think it's -- it's -- it's fair up to the point
5 of paying it for the cost associated to our facility, you
6 know, but, you know, above and beyond, you know, what it
7 costs to get milk to our facilities, we don't believe it's
8 fair.

9 Q. Not fair that Class I would have some kind of
10 marketplace-wide balancing obligation?

11 A. Correct. We believe that that should be handled,
12 you know, based upon the individual factors of that plant
13 relative to the milk supply.

14 Q. And has Shehadey Family Foods ever been told by a
15 supplier, "We're not able to get from you sufficient costs
16 to balance"?

17 A. No.

18 Q. And I believe you said that Shehadey Family Foods
19 doesn't decide the source of where its milk comes from
20 within a cooperative vis-à-vis the specific farm that
21 supplies it; is that right?

22 A. No. Yeah, we do not.

23 Q. And given that, would you agree that cooperatives
24 have flexibility within the milk contract that you have
25 with them to do their own internal balancing in terms of
26 deciding where milk should be allocated?

27 A. Yeah. They -- and I believe so. I believe that
28 the cooperatives have the decision to: A, determine which



1 locations of their farms go to that given plant. They can
2 determine, you know, the -- you know, the -- the
3 historical component test to determine which facility
4 should go to a cheese plant, which should go to a butter
5 plant, which should go to a milk processing facility. You
6 know, they have those abilities to dictate which milk goes
7 where. We just order the milk.

8 There are examples of when we have quality issues,
9 we can then pass that along to our cooperatives and tell
10 them that, "Hey, these farmers or these loads are having
11 quality issues," and, you know, occasionally you will see
12 milk shipped away from them for a little bit while they
13 figure out what's going on. But primarily, it's just, you
14 know, "Hey, we need -- you know, we need 30 loads this
15 day," and it shows up.

16 Q. And let's go to the last piece -- the last piece,
17 please, the incentive to serve Class I.

18 Does Shehadey have a sufficient supply of milk for
19 its operations?

20 A. Yes, we do.

21 Q. And has Shehadey ever had a shortage of milk that
22 couldn't be resolved through either phone calls with your
23 cooperatives or spot purchases?

24 A. No, we have not. Not since I have been here.

25 Q. Has Shehadey ever had to make spot purchases
26 outside of its agreements with its cooperative suppliers?

27 A. Not -- not for raw milk, no.

28 Q. And I understand you mentioned earlier also that



1 Shehadey acquired a plant from the Dean Foods's
2 bankruptcy, and you have that here as one of the factors
3 that impacts -- or you believe supports that there's
4 plenty of incentive to serve Class I today.

5 So why is that bankruptcy, or what does -- why is
6 that relevant, or what does it reveal about the state of
7 Class I to you?

8 A. I -- I think, you know, looking at the industry
9 over the last few years, I think you really see the -- you
10 know, how healthy is Class I, how healthy is the market.
11 And it's -- you know, you look at the Dean Foods
12 bankruptcy as a whole, and the plants that -- I mean, you
13 look at the DFA acquisition of those facilities, right?
14 The average plant went for between 8 to \$10 million, if
15 you factor in all the facilities they purchased.

16 Q. Is that high or low?

17 A. I mean, that's less than putting in a full line,
18 right? If you were to go in and buy a press and a filler
19 and the equipment needed, that's -- that's more than the
20 whole plant costs.

21 And the Model Dairy acquisition was purely a -- we
22 needed processing capacity, and that area is difficult to
23 get to on a truck from Fresno to Reno and back. And so we
24 looked at that as a good opportunity to -- to grow our
25 brand, to -- and to be able to move different products to
26 different regions based upon the -- you know, how the
27 plants are built to -- what products they are built to run
28 for. And so I think it speaks to a very fragile Class I



1 industry.

2 Q. And then your last bullet point you say, "What
3 about consumers?"

4 How do you think Proposal 20 or the current
5 Class I differential impacts consumers?

6 A. Well, I think as -- as, you know, especially
7 yesterday, while I was here listening, we really talked
8 about the drivers of consumption and how it's reflective
9 of price. And, you know, we are concerned that as the
10 price of milk rises, the consumption decreases.

11 And so -- and also, you know, there has been a
12 very -- outside of ESL and aseptic products, there's been
13 very little innovation in Class I milk. And so if -- if
14 we are going to be able to change how milk is perceived in
15 the marketplace, we have to be able to keep the cost: A,
16 low -- cost low, and be able to, you know, have a little
17 bit of margin there to be able to make changes to it.

18 Q. And there was testimony in the last few days about
19 how the impact of an increased price can be more
20 significant on a branded product than on private label.

21 Does Shehadey Family Foods make any private label
22 milk or is it all branded?

23 A. No, we make both. And, you know, you know, the
24 bulk of the business is definitely private label.

25 Q. And in terms of the impact on both, what has been
26 your experience on, when prices are increased, if there's
27 an impact on the branded or private label products that
28 Shehadey sells?



1 A. Yeah. So typically when you do a price increase
2 to -- to the retail market, the brand, you know,
3 exponentially increases, because, you know, they're --
4 they are -- you know, they're marking up your product 30
5 to 40%, so, you know, a \$0.10 increase will generate a,
6 what, 12, 13% increase on the shelf. Whereas private
7 label, that's going to be dictated on the competition.

8 And so as the spread continues to happen between
9 branded and private label, it gets difficult to have
10 margin to reinvest into your facility, you know. And
11 especially as many of the large grocers now are moving
12 away from branded products, it gets very difficult to make
13 enough money to be able to turn around and invest money to
14 keep your plant running -- you know, running safe, running
15 with high quality. And so as milk gets more expensive, it
16 gets -- it squeezes brand out to where now retailers are
17 like, "Hey, do we even need it?"

18 Q. It becomes more of a pure commodity product?

19 A. Correct.

20 Q. And why as an industry should we care about that?
21 Why should we care about the sale of branded products and
22 the health of the sale of branded products over private
23 label or more commodity-type products?

24 A. Well, I think that's -- you know, I think branded
25 sales will -- you know, will indicate a healthier market.
26 It helps to, you know, as I said, reinvest in the
27 facilities. That is a large problem with Class I plants
28 right now, is a lot of them are in very bad shape, in very



1 bad condition, because we have operated so long on just,
2 you know, trying to keep the lights on with our pricing,
3 to get more business and volume and grow volume, that, you
4 know, we just haven't been able to keep our facilities,
5 you know, up to date.

6 And so if we can grow brand, if we can get brand
7 to sell, it's more -- you know, we can pay our suppliers
8 more, we can pay our employees more, and we can grow
9 Class I.

10 Q. And when we talk about innovation, would an
11 innovative dairy product or a new dairy product be more
12 likely to come out as a branded product or as a private
13 label product?

14 A. Branded.

15 Q. And if we could go to the next slide, please.

16 So closing out our discussion of Proposal 20, I'd
17 like to talk about the related Proposal 19.

18 I see you have four counties listed on this table;
19 Fresno, Solano, Washoe -- Washoe, and Douglas, correct?

20 A. Correct.

21 Q. And are these the counties in which Shehadey's
22 four plants are located?

23 A. Yes.

24 Q. So let's start with Fresno. Why don't you walk us
25 through the current differential and the impact of
26 Proposal 19 on that facility.

27 A. Okay. So Fresno is -- you know, that's where the
28 Producers Dairy plant is located. It's our main facility.



1 Currently the differential is \$1.60.

2 Q. And that means that the location differential is
3 zero today, correct?

4 A. Yes. Yes.

5 Q. And remind us how close Shehadey's milk supply is
6 to its Fresno facility.

7 A. So all of our milk comes from within 26 miles on
8 average.

9 Q. Thank you. Please continue.

10 A. Yeah. So the current is \$1.60. And based upon
11 the model, the minimum was \$1.90, and the average was
12 \$1.90. And Proposal 19 suggests \$2.50, which is \$0.60
13 above the model average and the model minimum.

14 Q. And given Shehadey's experience in the Fresno
15 area, do you believe that an increase in the differential
16 is necessary to attract sufficient supplies of milk to
17 that area?

18 A. I don't. The Central Valley of California is
19 where 88% of all supply of California milk comes from, and
20 Fresno is right in the heart of it. And, you know,
21 furthermore, the region's balancing plant is less than
22 two -- it's like 2.1 miles from our facility. All right?
23 And so the incentive to travel two miles, we believe, is
24 already captured in Class I pricing.

25 Q. And do you believe there's any need to encourage
26 additional milk production in the Fresno area?

27 A. No.

28 Q. Then let's talk about Solano County next, please.



1 A. So Solano County is on the outskirts of the Bay
2 Area. That's where, you know, we also have a Producers
3 Dairy plant there. The current differential is \$1.80, the
4 model minimum was \$1.90, and the average was \$2, and the
5 proposal from National Milk was \$2.90. So a \$1 increase
6 above the model minimum and \$0.90 above the model average.

7 Q. And similarly, for Solano County, what's your
8 experience with the abundance, or lack thereof, of milk
9 supply in that area?

10 A. So -- so the milk supply for Fairfield is -- for
11 Solano County, you know, it is further than Fresno, right?
12 It's not in the heart of the Central Valley. But the milk
13 supply is very close, and it is abundant. We don't have
14 issues receiving raw -- to getting raw milk in Fairfield.
15 And it is on the very outskirts of the Bay Area, so to --
16 to say that milk has to -- you know, to say that it's
17 going through San Francisco, as has been suggested in
18 other testimony, is inaccurate. It is right off the major
19 highway. It is -- you know, it doesn't -- and the milk
20 comes from the central -- you know, central inner parts of
21 California to get to get to Fairfield.

22 Q. And how does the increase that NMPF Proposal 19
23 proposes for Solano County compare to, for example, Los
24 Angeles County?

25 A. So Los Angeles County, for example, today their
26 current differential is \$2.10, the model average was
27 \$2.25, and the proposal was \$3. So, therefore, it's \$0.75
28 above the average and \$0.80 above the minimum. So you got



1 Fairfield, which is \$1 above the minimum and \$0.90 above
2 the average, and so, you know, basically a \$0.20 -- the
3 proposal is that Fairfield would go up \$0.20 higher than
4 Los Angeles County. There's not a drop of milk in Los
5 Angeles County, and there's far more traffic in Los
6 Angeles County than the outskirts of the Bay Area. So we
7 have a very hard time reconciling why Fairfield would be
8 increasing \$0.20 more than Los Angeles County.

9 Q. Say again for me what's the differential proposed
10 in Proposal 19 for Los Angeles County?

11 A. \$3.

12 Q. \$3.

13 And for Fairfield County it's \$2.90?

14 A. Correct.

15 Q. So more or less, Proposal 19 suggests that it's
16 equally difficult to acquire milk in L.A. County as it is
17 in Solano County?

18 A. Correct.

19 Q. And as you said, that is not at all your
20 experience?

21 A. No.

22 Q. Similarly, if you could also please talk to the
23 Nevada and Oregon county differentials.

24 A. Yeah. So today our plant in Washoe County,
25 Nevada, is \$1.70. The model minimum and average are both
26 \$1.90. The proposal from National Milk is \$2.50, which is
27 \$0.60 above the minimum and the average.

28 Reno is very similar to Fresno where there's



1 abundant supply of milk in the region. It's very close to
2 the balancing plant to there.

3 Roseburg, Oregon, I guess in Douglas County,
4 currently today it's \$1.90, the minimum was \$2, and the
5 average was \$2, and the proposal from National Milk was
6 \$3, which, I believe the \$1 is the largest increase in the
7 nation. And the milk that -- you know, most of the milk
8 that goes to our Umpqua Dairy facility in Roseburg,
9 Oregon, comes from below them. And as I said a minute
10 ago, if it didn't go to our facility in Roseburg, it would
11 have to go up to Portland.

12 Q. How far is that, the distance between Roseburg and
13 Portland?

14 A. About four hours by car.

15 Q. And so if the price of milk in Douglas, Oregon,
16 became just too expensive for the Roseburg facility, do
17 you think that would serve farmers to then have fewer
18 options to sell their milk in that region?

19 A. It would not.

20 Q. And do you believe that Shehadey Family Foods
21 needs to pay an additional \$1 per hundredweight for milk
22 in that -- in order to attract sufficient milk to its
23 Roseburg facility?

24 A. I don't. Because in Roseburg, Oregon, the
25 premiums that we are paying our supplier there are
26 substantially higher than any of our other facilities.
27 And so we already are paying a higher premium, we're
28 paying a delivery charge, we're paying a fuel surcharge,



1 and we're still paying an rBST-free premium. So the
2 premium is far and away higher than the other areas, and
3 so we feel like that's already been accounted for.

4 Q. And if the differential were to increase by a
5 significant amount, would Shehadey have to rethink the
6 premiums it pays its suppliers?

7 A. Yeah. We would have to rethink our entire milk
8 supply up there. It's -- it's -- you know, it's gotten
9 to -- what's difficult now as a Class I processor is we
10 are also directly competing against our milk suppliers,
11 right? Our milk suppliers are also our competitors on the
12 bottling side. And so it -- it is very difficult to kind
13 of maneuver.

14 Q. And does Shehadey Family Foods have a preference
15 about whether or not it would prefer to pay more money in
16 an over-order premium directly to its suppliers versus
17 into a pool to be shared amongst all producers?

18 A. Yeah, we'd rather pay our suppliers. A, I think
19 it helps us account for the economics of the region,
20 the -- it allows you to adapt to changes, right? I mean,
21 for example, fuel surcharge. No -- well, I shouldn't say
22 no.

23 For our three facilities, the two in California
24 and the one in Nevada, we didn't pay a fuel surcharge.
25 And then when milk -- when fuel skyrocketed, it's -- we're
26 now paying it to all -- all three facilities are now
27 paying a fuel surcharge. And so it allows us to adapt to
28 changes in -- in the market.



1 Q. And if the cost of fuel were to decrease
2 dramatically, which is possible, right?

3 A. Yeah.

4 Q. If it were to decrease dramatically, the cost of
5 fuel, Shehadey Family Foods and its suppliers could adapt
6 through adjusting their over-order premium, correct?

7 A. Correct.

8 Q. But if the cost of fuel were to be reduced
9 dramatically and that was built into the differential,
10 Shehadey Family Foods would have no way to adjust that
11 factor?

12 A. Correct.

13 Q. If we could go to the next slide, please.

14 So first, can you just tell us what is the data
15 being displayed here?

16 A. So this is the NASS livestock inventory for milk
17 cattle.

18 Q. Can you tell us, what does NASS stand for?

19 A. The National -- I may need help with that.

20 Q. That's all right. We have had a lot of acronyms.

21 How about, tell us generally, what is NASS? Where
22 did you get the data?

23 A. So this is on a government site. NASS.gov,
24 there's -- there's a link in there that you can go. You
25 select what you are looking for. So in this case, I
26 selected California, milk cattle, and then total
27 inventory. And this tells you, essentially, what is the
28 believed milk cattle inventory by county in California.



1 Q. And then you -- these categories here, region, are
2 those something that are developed within the data or is
3 that -- are those categories that you developed?

4 A. I developed those. You know, trying to fit this
5 onto a nice little screenshot was a little difficult, so
6 I -- I essentially assigned kind of regional. Central
7 California is essentially that, Central California.
8 Inland Desert, that's going to be your San Bernardino
9 area. Northern California, which is kind of the area
10 north of San Francisco. Bay Area is the Bay Area. Kind
11 of your North Central is kind of the -- just above the
12 Central Valley of California. And then Southern
13 California is everything -- everything south of the
14 Grapevine and west of kind of that San Bernardino area.

15 Q. And I believe that the source of this data is
16 found in Exhibit 24C, which is marked as Exhibit 483,
17 correct?

18 A. Correct.

19 Q. And so what does this data show about the
20 concentration of milk supplies in California?

21 A. So -- so what this table does on my slide show is
22 it shows you the differences between 2020 and 2022. And
23 it shows by region what the -- what the inventory of milk
24 cattle is. And so it tells us that in the two years in
25 the state of California there's been an estimated decrease
26 of 5,000 milk cows.

27 Q. Is that a large number for cattle to decrease by
28 or fairly small?



1 A. Fairly small. I mean, it ebbs and flows.

2 Q. And tell us about the -- in addition to the
3 consistency of total cows in the state of California over
4 this two-year period, tell us about the geographic
5 concentration of the cattle as well, please.

6 A. So in both years analyzed, 88% of the milk supply
7 is in the Central California. And that is, you know, like
8 I said, in our plant in Fresno is right in the heart of
9 that, and our facility in Fairfield, California, is just
10 kind of on the outskirts of that.

11 Q. And why does this consistency of cattle location
12 matter to setting Class I differentials?

13 A. Well, as -- you know, as we've discussed this --
14 this topic, right? It's been -- it's been said numerous
15 times that Class I facilities are just not in convenient
16 locations to the farm, that the hauling to get to them has
17 gotten harder because they have to go further as plants
18 have closed and as farms have closed down. And I think
19 this graphic here shows us that, you know, our facility in
20 Fresno is not in an inconvenient location to the farm. It
21 is not in an inconvenient location to haul to.

22 Q. Can you describe for us, you can show with the
23 mouse, but please also describe with your words which
24 county in your map is Fresno County?

25 A. Fresno is right here (indicating). It looks like
26 a little dog bone.

27 Q. It is 98,000 cattle, correct?

28 A. Correct.



1 Q. And there's a county that's shaded the darkest
2 color, yellow/orange, with 490,000 cattle.

3 What county is that?

4 A. Tulare. There's more cows than people in Tulare
5 County. And you can -- you can smell it when you drive
6 through it.

7 Q. I have heard the same about Twin Falls, my
8 hometown.

9 In your experience in the five years prior to
10 2020, was there a similar consistency in the concentration
11 of cattle in California in the Central Valley?

12 A. Yes, there was. And, you know, five years prior
13 to that I was actually the cost accountant for Dean Foods
14 for Alta Dena, their two facilities in Southern
15 California. And all of our milk either came from the
16 Central Valley, or in moments of desperation, Arizona.
17 And so it hasn't changed to where milk -- milk is getting
18 supply from.

19 Q. And do you have any concerns that reducing the
20 Class I differential by \$1.60 will contract the ability or
21 the number of Class I suppliers within the state of
22 California? Will reducing the Class I -- strike that, I'm
23 going to start that again.

24 Will reducing the Class I differential by \$1.60
25 make it more difficult for Shehadey to attract the milk
26 supplies that it needs?

27 A. I don't believe it will. Just -- just relative to
28 our location. We believe that there's already enough



1 incentive to come to our facility, especially there in
2 Fresno where the milk is around us. You know, we're so
3 close to the balancing plants, and as I said earlier, our
4 intention would be to -- you know, to pay our supplier
5 that difference.

6 Q. And if we could go to the next slide, please.

7 Walk us through why you believe Proposal 19 will
8 not help Class I suppliers.

9 A. So -- so I can speak to the markets that -- that
10 Shehadey Family Foods is part of. Very low Class I
11 utilization. In California, this last month, for example,
12 Class I was 20% utilization, and that was with next to no
13 pooling done by Class III facilities. All right? So in
14 months where everybody pools, Class I's down 12%. And so
15 this increase gets so diluted by the time it actually gets
16 paid out to those who -- you know, those who are pooling
17 as manufacturers, that we don't believe it's going to be a
18 lasting solution.

19 Q. And you also note that Class I processors do not
20 control cooperative members pay.

21 Why do you think that's relevant to Proposal 19?

22 A. You know, as we -- as we've had discussions with
23 farmers, many of them have reached out to us, and they
24 have discussed that, you know, they are concerned that
25 they see the -- the uniform price, and they see what their
26 paychecks are for, and they are -- they are really
27 concerned as to why is there such a gap between the
28 uniform price and their take-home pay.



1 And for us, you know, our struggle is that we
2 don't even know if these increases are going to make it to
3 the farmer, right? Because we're paying premiums, we're
4 paying delivery, we're paying all these things today, and
5 it's -- you know, there's still deductions below the
6 uniform price.

7 Q. And if Shehadey Family Foods does find itself in a
8 situation where milk supplies are tight, do you believe
9 that you could sufficiently solve that through over-order
10 premiums?

11 A. Yeah. Yeah. I mean, you know, I mean, it's
12 essentially going -- you know, if there's no milk, you go
13 to the spot market, you are paying a higher premium, just
14 the same way if we can't get a contract, we raise our
15 premiums to be able to supply -- to get the supply.

16 Q. And so if we could go to the next slide, please.

17 Can you tell us why Shehadey Family -- actually,
18 before you get into that, can you remind us, please, what
19 Class II products Shehadey manufactures.

20 A. So creams, half and half, ice cream, ice cream
21 mix, cottage cheese, sour cream. Then we also provide
22 bulk items to Class II facilities, so we make totes of
23 whole milk and we sell them to ice cream plants, and so it
24 gets classified as Class II.

25 Q. And you say here that all four of your facilities
26 are over 25% Class I.

27 So does that mean when Shehadey Family Foods
28 manufactures Class II products, it has to pool those, that



1 milk?

2 A. Correct.

3 Q. And can you walk us through then, why Shehadey
4 opposes Proposal 21?

5 A. So Proposal 21 would impact those that pool. All
6 right? The differential -- the differential for those
7 facilities would increase. For those that are non-pooled
8 facilities, wouldn't -- wouldn't bear that same increase.
9 And so you are taking two facilities that make the exact
10 same product, now one of them has to pay more and one of
11 them doesn't. And it -- it doesn't -- you know, kind of
12 feels a little bit of an uncompetitive advantage --
13 disadvantage.

14 Q. And, again, do you believe that Class I processors
15 would be disadvantaged in yet another way to all of the
16 other classes?

17 A. I do.

18 Q. So in closing, can you tell us what you hope USDA
19 will takeaway from your testimony as either the key facts
20 or kind of the key issues that they should consider when
21 setting Class I differentials?

22 A. Yeah. I think the takeaway for me is just, you
23 know, I can speak to Shehadey Family Foods. So we -- we
24 truly value our relationship to -- with our suppliers and
25 the farmers. And -- and we want -- we want them to
26 succeed. We want this industry to succeed. And we -- we
27 feel that the best way to get there is to do it direct, to
28 take -- to take the money that goes and gets diluted and



1 spread around, you know, other manufacturers that don't
2 even do Class I, to take that out and to pay directly to
3 our suppliers for the hard work they are doing is the best
4 way to get there. And I think we can do that together.

5 Q. Thank you very much, Mr. Ellis.

6 MS. VULIN: Your Honor, pending cross-examination,
7 I move admission of Exhibits 480, 481, 482, and 483,
8 please. And I make the witness available for
9 cross-examination, although we may be due for a break.

10 THE COURT: That was a popular idea, Ms. Vulin.

11 MS. VULIN: I'm very popular.

12 THE COURT: All right. Let's do take a break.

13 Please be back and ready to go at 9:30.

14 And, Mr. Ellis, you, of course, are free to walk
15 around the building.

16 (Whereupon, a break was taken.)

17 THE COURT: We are back on record at 9:30.

18 I do have one preliminary matter. We have had a
19 caution about where we're parked. You saw how busy this
20 parking lot is with this other event in the Event Centre.
21 We're not to park in front of the doughnut place. If you
22 have parked in the space where the customers would likely
23 want to be parked to reach those businesses, you may want
24 to move. How would they know? I mean --

25 All right. Now, cross-examination, please.

26 MS. HANCOCK: Thanks, Your Honor.

27 //

28 //



1 CROSS-EXAMINATION

2 BY MS. HANCOCK:

3 Q. I'm Nicole Hancock with National Milk.

4 Good morning. I just have a few questions. I am
5 on your testimony, the PowerPoint in Exhibit 482. If you
6 turn to page 3, this is just the map just to orient us.
7 It's not specific to this, it's just because I like to
8 have an anchor page to reference from.

9 Since the California promulgation hearing, the
10 Shehadey Family Foods business has expanded three times;
11 is that right?

12 A. Correct.

13 Q. And if we look -- well, I guess I should ask. The
14 Reno plant that was acquired through the Dean Foods
15 bankruptcy, I have heard rumors that the amount that was
16 paid for that was \$7,777,777.

17 A. That was our offer for Las Vegas.

18 Q. Oh, okay.

19 A. That was rejected.

20 Q. Okay.

21 A. Based on public data, the information for Reno
22 was -- was well below that amount.

23 Q. Okay. I was just more curious for the fun of that
24 number --

25 A. We thought it would be funny to bid all 7s for Las
26 Vegas, and we weren't lucky, though.

27 Q. All right. So in your written testimony -- well,
28 maybe I should clarify the timing on that.



1 When -- when, did the Shehadey Family Foods
2 acquire the Reno facility?

3 A. That would have been May of -- May of 2020? '19?

4 THE COURT: Is it in your written testimony, do
5 you think?

6 THE WITNESS: It might be.

7 THE COURT: You're welcome to reference it to see.

8 MS. HANCOCK: I didn't see the date, but maybe it
9 is.

10 THE WITNESS: Yeah, it might not be. Yeah,
11 whenever the bankruptcy closed.

12 BY MS. HANCOCK:

13 Q. Okay. So somewhere in that 2019-2020 timeframe?

14 A. Yeah. It's been an eventful few years, so --

15 Q. It was after you had joined the Shehadey Family
16 Foods business?

17 A. Yes.

18 Q. So within the last five years?

19 A. Yes.

20 Q. And then how about the Roseburg facility?

21 A. Roseburg would have been essentially two years
22 ago.

23 Q. And any expansions or growth since you have been
24 with the Shehadey Family Foods in California?

25 A. No.

26 Q. So the growth has gone outside of California to
27 expand into the region; is that fair?

28 A. I mean, I would say the acquisitions, yes. You



1 know, our facilities in California are processing a lot
2 more than what they were five years ago. You know,
3 mainly, a lot of that is through the Berkeley Farms
4 closure, one of the facilities not purchased through the
5 Dean Foods bankruptcy. You know, so -- you know, so I
6 think, you know, a lot of growth has happened in
7 California, too.

8 Q. Okay. So you didn't expand the facilities, but
9 there's been a lot of growth that's happened within
10 California?

11 A. Yeah, excess capacity.

12 Q. Okay. Within your existing facilities, you have
13 been able to expand in California as well?

14 A. Yes.

15 Q. And in total, it's about three times since 2016?

16 A. Three occurrences. Reno -- Reno's volume is what
17 Fresno can produce in, like, two days for a month. So it
18 is not big facilities that we acquired.

19 Q. Okay. And in your -- in your written testimony on
20 page 8, under your conclusion, so it's in Exhibit 480,
21 your first sentence under the conclusion says that you
22 feel like you are just fighting an uphill battle just to
23 survive; is that right?

24 A. Yeah.

25 Q. But yet, even though you are fighting this uphill
26 battle to survive, you have been able to close on all of
27 these expansion efforts; is that accurate?

28 A. We have -- yes, we have acquired. As I mentioned



1 earlier, I mean, we -- we purchased Reno for less than
2 what a new press would cost us, and so --

3 THE COURT: A new?

4 THE WITNESS: A new press, a new HTST system.

5 And so, you know, that's -- it's fair, yes, we
6 have acquired and we have grown. But they have not
7 been -- you know, they have not been anywhere near what
8 you are hearing these new, you know, other manufacturing
9 plants getting built for. They are not anywhere in the
10 realm of those economic impacts.

11 BY MS. HANCOCK:

12 Q. It's fair to say that the Shehadey Family Foods
13 business is a successful endeavor?

14 A. Yeah. I mean, we -- we make money, yes.

15 Q. And do you know what the Class I utilization is
16 for the Shehadey Family Foods business?

17 A. In total, it's over 90%.

18 Q. Okay. So that success has been able to be
19 achieved even though -- even though almost the entirety of
20 the business is within the Class I --

21 A. Yes.

22 Q. -- area? Okay.

23 And then I think that you said that your position
24 is, is that -- well, strike that. Let me back up.

25 Does the Shehadey Family Foods pay an over-order
26 premium today?

27 A. Yes, to everybody.

28 Q. Every day of the year that you receive milk?



1 A. Yes.

2 Q. And do you know, can you give me, do you feel
3 comfortable sharing what that range of the over-order
4 premium is?

5 A. I mean, I can talk in generalities. I mean, they
6 are -- on average, I mean, it goes from -- I mean, I can
7 speak to the high, which is close to -- you know, we're
8 talking dollars, right? We're not talking \$0.25 or -- or
9 whatever. I mean, there's dollars of premiums in general,
10 of some more, some less.

11 Q. \$2? You said on average, I'm just trying to get a
12 range.

13 A. I'm not comfortable speaking of specifics because
14 there is a very wide range, and pretty easy to know where
15 is where in that range. But it's -- on average, it's well
16 over -- it's probably close to \$2.

17 Q. Okay. And so let's just -- for our discussion
18 purposes, let's say your over-order premium is \$2.

19 And your position is, is that you would like to
20 have \$1.60 removed from the base differential; is that
21 right?

22 A. Yes.

23 Q. And so I think that your words were, at least I
24 wrote in my notes, that you intend that if you could
25 achieve that goal of removing that base differential of
26 \$1.60, that you would put that into an over-order premium
27 that you could pay to your producers as well; is that
28 right?



1 A. Correct.

2 Q. And so is it -- are you saying today that if your
3 current over-order premium is \$2 that you pay today, and
4 if you were able to achieve that base differential savings
5 of \$1.60, that going forward you would be paying at least
6 that \$3.60 as an over-order premium?

7 A. We would intend to pass along that amount to our
8 suppliers. I can't speak to the specifics of what
9 everybody would do, but for Shehadey Family Foods, we
10 would intend to pay that to the farmers -- or to the
11 cooperatives. Right?

12 Q. And I have worked with the family business, and so
13 I know they are very genuine and honorable family members
14 that run that business, and I have no doubt that they
15 would take good care of their producers.

16 My question is, though, is -- you are not saying
17 that you would guarantee that -- that going forward, if
18 you were able to remove that base differential, that you
19 would pay no less than \$3.60 a hundredweight in an
20 over-order premium if you were able to achieve that goal
21 of removing the base differential?

22 A. I won't say that we -- in every scenario that we
23 would, because I think we would go renegotiate every
24 contract. But I would feel very comfortable in saying
25 that I believe so.

26 Q. Okay. And -- and that's because at the end of the
27 day, the Shehadey Family Foods is still a business; is
28 that right?



1 A. Yeah, they are.

2 Q. And where there's opportunities to achieve expense
3 savings, you have duties to the people that own the
4 business to try and get those savings; is that fair?

5 A. Well, I think for us, you know, I think Ashley and
6 Sally kind of brought that statement up, that, you know, a
7 member of MIG group said we're not necessarily looking for
8 a reduction, we're looking just that we want to pay it
9 directly. And that's something, you know, I have said
10 from the get-go.

11 We're not looking necessarily for a reduction in
12 price. We just -- I truly believe the best way to benefit
13 the farmers is for me to pay you, not to pay it to a pool
14 that gets -- gets diluted.

15 So I don't -- we don't necessarily intend for this
16 to be some monumental savings to the company, it's just
17 that we want to redirect where it's going.

18 Q. If you can turn to page 5 of your PowerPoint
19 presentation in Exhibit 482.

20 A. Okay.

21 Q. And the purpose of you putting together page 5 was
22 to show what -- that there are current relationships
23 between the different counties that are not preserved by
24 National Milk's proposal; is that accurate?

25 A. Correct.

26 Q. And I think that what you described was, is that
27 you have concerns about one of your plants having a
28 different cost than a competing plant that might be in a



1 different jurisdiction; is that right?

2 A. I mean, I guess same -- same order, just different
3 location, yeah. I mean, both. You know, one of my big --
4 one of my big issues with this is that our facility in
5 Solano County is increasing -- proposing to increase 15 to
6 \$0.20 more than a plant in Los Angeles County, and the
7 traffic is nowhere near Los Angeles County, the supply is
8 much closer than Los Angeles County, and so it's -- it's
9 very difficult to look at that and say, yeah, that makes
10 sense, because it doesn't.

11 Q. Do you agree that Los Angeles County should have a
12 higher differential?

13 A. I believe it should be doing at least what Solano
14 County is doing. If I was -- if I was looking at it as a
15 perspective of what makes sense, it -- it would, for sure,
16 be increasing at least what Solano County did.

17 Q. And that's because of things like distance from
18 the farm and traffic concerns?

19 A. Yeah. And the fact that it has to go up and over
20 a steep terrain, and, you know, Solano County doesn't have
21 to.

22 Q. Okay. Some of those factors that the model
23 doesn't take into account?

24 A. Correct.

25 Q. Okay. And so currently, when you are paying an
26 over-order premium, you don't know what your competitors
27 are paying in over-order premium; is that right?

28 A. We don't know specifically, no. I think, you



1 know, the market has ideas that we certainly see -- you
2 know, I mean, there's certain retailers you can go to and
3 have an idea what -- what -- you know, what costs are and
4 prices are. You know, we -- we don't know. But I think
5 we all kind of have rough ideas where -- where different
6 geographical regions are at.

7 Q. Okay. You can kind of ballpark it --

8 A. Yeah.

9 Q. -- is that fair?

10 A. Yeah.

11 Q. Do you know what your error rate would be in that
12 ballparking? Like, \$0.50 here or there?

13 A. Yeah, I think a little less than \$0.50.

14 Q. \$0.25?

15 A. Yeah, maybe.

16 Q. Okay. So give or take \$0.25 positive or negative,
17 you kind of know the -- the general amount that -- that
18 the competitors are paying based on what your retailers
19 are telling you?

20 A. Yeah.

21 Q. Okay. And -- and if you were to remove that \$1.60
22 from the base differentials and put that into your -- into
23 your pool that -- from which you could bargain for with
24 your producers a negotiated over-order premium price, that
25 process wouldn't give you any greater visibility or
26 insight into what your competitors were doing, would it?

27 A. No.

28 Q. In fact, it would take what is currently now maybe



1 on average \$2, and it would increase it to -- to at least
2 3.60 or maybe higher; is that right?

3 A. Yeah.

4 Q. And so would you expect that that ballparking
5 range, your error rate of \$0.25 positive or potentially
6 negative that you could be off on what your competitors
7 are paying, proportionately that error range could
8 increase as well; is that right?

9 A. I mean, it could. I guess, as I have stated, you
10 know, I believe that at least for independents, I can't
11 speak for what, you know, DFA would charge themselves,
12 right? I don't -- that's all, you know, left pocket,
13 right pocket in that case. But to us and to the
14 independents, I believe that for the most part, we
15 would -- we would be tasked with that all getting added as
16 an over-order premium.

17 Q. Yeah. And you --

18 THE COURT: All getting added into what?

19 THE WITNESS: An over-order premium.

20 Sorry, my lips are sticking together.

21 BY MS. HANCOCK:

22 Q. And you just referenced DFA having its -- its own
23 farms from which it can negotiate that acquisition of
24 milk, but the Shehadey Family Foods also has its own farms
25 as well; is that right?

26 A. We got one that does about 10% of our entire
27 company's volume.

28 Q. It used to do a much larger percentage of the



1 company's volume; is that right?

2 A. Yeah.

3 Q. Before it --

4 A. It only had one facility, yeah.

5 Q. Sorry.

6 A. We only had one facility, yes.

7 Q. Before the expansion?

8 A. Uh-huh.

9 Q. You have to answer audibly.

10 A. Yes.

11 Q. Okay.

12 MS. HANCOCK: That's all I have. Thank you so
13 much for your time.

14 CROSS-EXAMINATION

15 BY MR. ROSENBAUM:

16 Q. Steve Rosenbaum for the International Dairy Foods
17 Association.

18 Good morning.

19 A. Good morning.

20 Q. So you testified a little bit about the Dean Foods
21 bankruptcy, and I'd just like to follow up with a few
22 questions relating to that.

23 Now, you actually worked for Dean Foods as I
24 understand it, correct?

25 A. Yeah, I did, up until 2018, yeah.

26 Q. Okay. So when -- now -- and by the way, to jog
27 your memory, according to the News Reports, the closure of
28 the Dean Foods bankruptcy was in April 2020.



1 Does that help orient you as to --

2 A. Yeah, it does.

3 Q. -- as to when you -- when your company acquired
4 the Reno facility out of the bankruptcy?

5 A. Yes.

6 Q. Okay. And that -- so the year would have been
7 2020, correct?

8 A. Yeah.

9 Q. And the published report, because this went
10 through a bankruptcy, obviously the sale prices were all
11 revealed publicly, and at least the report was that that
12 purchase was for \$3.7 million; is that correct?

13 A. Correct.

14 Q. And --

15 THE COURT: Now, "that purchase," you are talking
16 about Reno?

17 MR. ROSENBAUM: Yes. The purchase by Shehadey of
18 the Reno facility that had previously been owned by Dean
19 Foods, that was the purchase price of \$3.7 million,
20 correct?

21 THE WITNESS: I believe so, yes.

22 THE COURT: And I need more volume on
23 Mr. Rosenbaum's mic, please.

24 MR. ROSENBAUM: I will speak more closely into it
25 as well.

26 THE COURT: That also helps.

27 BY MR. ROSENBAUM:

28 Q. And can you just tell us, once again, what the



1 comparison is of \$3.7 million to purchase an entire
2 facility versus what it would cost to install one
3 production line?

4 A. Yeah. So I mean, you are looking at a production
5 line north of \$10 million. I mean, that -- that's --
6 that's -- that's just for, you know, a filler and -- and,
7 you know, a smaller HTST. I mean, if you are needing to
8 put piping and cooling and -- and those types of, you
9 know, additions in your facility, it will be well -- well
10 above \$10 million.

11 Q. And -- and when we're talking about Proposal 19,
12 Proposal 20, we're talking about how much Class I handlers
13 should have to pay for milk, right? The minimum milk
14 price, correct?

15 A. Correct.

16 Q. And, you know, what -- and I take it the -- from
17 what I know about bankruptcy law, there was some sort of
18 public auction or public opportunity of people to make
19 bids for the various Dean Foods facilities; is that
20 correct?

21 A. Yes.

22 Q. And Dean Foods, at the time, was the largest
23 Class I handler in the country, correct?

24 A. Yes.

25 Q. At the time they declared bankruptcy, correct?

26 A. Yes.

27 Q. Are you aware that Bordens also declared
28 bankruptcy roughly the same time?



1 A. Yeah. Yeah, shortly thereafter.

2 Q. And they were also quite a substantial Class I
3 handler, correct?

4 A. I believe so. I believe that at the time it was,
5 what, 11 -- 11 facilities that Borden owned, and I think
6 they are down to, what, four or five now?

7 Q. And so, you know, when -- so you are looking at --
8 in Proposal 19, you are looking at a material increase in
9 what Class I handlers would have to pay, correct?

10 A. Correct.

11 Q. And, you know, what is it -- and we obviously have
12 the statistics all in front of us as to what the decline
13 has been in Class I consumption, correct?

14 A. Correct.

15 Q. And so what -- you know, what lesson do you draw
16 regarding the desirability or the legitimacy of a proposed
17 material increase in the raw milk costs for Class I
18 handlers in a scenario in which in the last three and a
19 half years or so, not only have the two -- two of the
20 largest, perhaps the two largest, proprietary handlers in
21 the country went bankrupt, and potential buyers were so
22 unenamored of the opportunities presented, that they were
23 only willing to pay, and through competition only had to
24 pay, less to acquire, on average, entire facilities than
25 it would cost to build one single line of production?

26 A. Yeah. I think, you know, the -- obviously the
27 abilities to continue to absorb these increases with the
28 falling demand will just continue that decline. And, you



1 know, as I said in my testimony, I think those types of
2 bankruptcies and the things that have happened in the
3 market are very indicative of the health of the Class I
4 industry right now.

5 They -- I mean, as I told Ms. Hancock, we are --
6 yeah, we're successful, we're making money, but it's
7 not -- I mean, it's not enough to go build these massive
8 facilities that you are seeing get built today. We -- we
9 are able to invest into our facilities to keep it running,
10 and beyond that, there's -- there's very little margin to
11 go do those types of -- types of activities.

12 Q. And in that scenario, how do you react to the kind
13 of proposed increases in the Class I differentials that
14 are applicable to your facilities were Proposal 19 to be
15 adopted?

16 A. So the -- you know, the reaction obviously is -- I
17 mean, we just -- we have to brace for more declines, for
18 branded sales to continue to decrease. We will have to
19 figure out where to shed costs and -- in our facilities to
20 be able to try to keep the prices low.

21 MR. ROSENBAUM: That's all I have. Thank you.

22 THE COURT: Is there other cross-examination
23 before I invite questions from the Agricultural Marketing
24 Service?

25 There are no other cross-examination questions. I
26 do invite the Agricultural Marketing Service to ask
27 questions.

28 //



CROSS-EXAMINATION

1
2 BY MS. TAYLOR:

3 Q. Good morning.

4 A. Good morning.

5 Q. Thank you so much for coming back to testify.

6 A. Nowhere else I would rather be.

7 Q. You mentioned that 90% of Shehadey's utilization
8 is Class I as an entire business, approximately?

9 A. Yeah. And that's a very rough guess, right?

10 Q. Sure.

11 Do you have HTST and ESL?

12 A. We are 100% HTST, except for in Reno, Nevada, we
13 have an ESL little portion pack creamer cup line. That is
14 it.

15 Q. For your Class II products?

16 A. Yes.

17 Q. Yes. We wanted that on record, just to be sure.

18 The milk that you get into your farms, do you know
19 what the component level is of that milk, roughly?

20 A. So, I mean, I don't have that in front of me.
21 That's what I previously was here to testify about. I
22 know that we are -- based on the current formulas, we
23 are -- it's higher on butterfat, and on the other
24 components it's at or below the -- the current
25 formulations.

26 Q. Okay. And so you talked about -- and I'm in
27 statement Exhibit 480, and you mention that you buy milk
28 from your Shehadey Family Farms -- or Bar 20 Dairy, I



1 should say --

2 A. Bar 20 Dairy, yes.

3 Q. -- to be specific.

4 And then the rest you buy from cooperatives; is
5 that correct?

6 A. Yes.

7 Q. Okay. And so is it that you buy all the milk from
8 Bar 20 and then whatever additional supplies you need you
9 purchase from the cooperative?

10 A. Yes. The cooperative is our main supplier,
11 though. Bar 20 is 20, 25% of our supply in Fresno, and
12 then so our cooperative is 70, 75% of our supply.

13 Q. Okay. And you talked about how you worked to
14 balance that supply through your orders for the co-op, and
15 you try to forecast, and you receive credits for -- I
16 think you receive credits, you know, universal receiving
17 credits.

18 A. We receive those at two locations.

19 Q. Okay.

20 A. Two of the others, we do not.

21 Q. Okay. So I wanted just to talk a little bit more
22 about that, then.

23 So I can understand -- then that's based on, like,
24 day-to-day receipts or a week?

25 A. So typically it's based upon a week, and it's
26 both -- both cooperatives that offer that discount to us
27 calculate it differently.

28 Q. Okay. And so then how does that work for the two



1 facilities you say you don't receive credits?

2 A. I mean, it -- it doesn't really change anything.
3 I mean, the facility, one of them that we don't get
4 credits for, we receive milk seven days a week, and, you
5 know, we process milk every day.

6 Q. And so do your -- does your needs differ? Do you
7 see your needs differing seasonally, and so your orders
8 during a certain season might be more that the co-op needs
9 to supply versus a different time of the year?

10 A. The -- the seasonality is pretty much just
11 indicative of schools. When schools are out, our demand
12 goes down a little bit. But, you know, some of that gets
13 replaced with a little bit of higher retail volumes when
14 schools are out. But it does -- it does taper off during
15 the summer.

16 Q. Okay.

17 A. And, you know, during the summer is when we're
18 primarily purchasing, you know, cream and other products
19 out on the spot market for, you know, ice cream season.

20 Q. Uh-huh.

21 In your statement 24, on page 7, towards the
22 bottom, you talk about the only way for Shehadey to
23 address farmer pay is to pay more money to our direct
24 ships.

25 But I'm gathering from your -- our conversation
26 that you have one direct ship supplier, the rest would
27 be --

28 A. Yeah. And that I guess I meant those who are



1 directly serving our facilities. I shouldn't say direct
2 ships. It should be those supplying our facilities.

3 Q. So instead, for example, of paying the
4 differential into the pool, you would just pay that
5 differential to either your own farm, Bar 20, or to the
6 cooperative directly who is supplying you?

7 A. Correct.

8 Q. Okay.

9 THE COURT: Where is that direct ship phrase?

10 MS. TAYLOR: Oh, I'm sorry. Towards the bottom of
11 page 7. It's the third line from the bottom.

12 THE COURT: Do you actually want us to change that
13 on the record copy?

14 THE WITNESS: I think it should just say "direct
15 suppliers."

16 THE COURT: "Direct suppliers" rather than "direct
17 ship farmers"?

18 THE WITNESS: Yeah.

19 THE COURT: Let's make that change. This would be
20 in Exhibit 480, page 7, third line up from the bottom, the
21 sentence ends with "our direct ship farmers."

22 And, Mr. Ellis, how should it end?

23 THE WITNESS: "Our direct suppliers."

24 THE COURT: So we just strike "direct ship
25 farmers" and insert "direct suppliers." Thank you.

26 THE WITNESS: Yep.

27 BY MS. TAYLOR:

28 Q. Okay. I'm going to move to Exhibit 481, and I'm



1 on page 4, just for -- to anchor us, as Ms. Hancock likes
2 to say?

3 In Table 2 you have the locations of where your
4 plants are. But in Table 1 -- excuse me -- the previous
5 page you kind of talk about how it puts you at a
6 competitive disadvantage, the increases, the proposed
7 increases in National Milk's Number 19.

8 And I -- I wanted to ask, since you don't have, to
9 my knowledge, the location -- let me put it this way:
10 Where are your direct competitors located? Because I
11 don't see those locations and differentials in this chart.

12 A. So, you know, in terms of our direct competitors
13 in the dairy market, right? I mean, we have got -- we
14 have got direct competitors to the south in Los Angeles
15 County. We have got a -- you know, we've got direct
16 competitors north of us in, you know, the Sacramento area.
17 We have got, you know, a lot of extended shelf life
18 competition that's all over the nation, including, you
19 know, right in the Central Valley.

20 Q. And when you mention that, their ESL competes with
21 your HTST products?

22 A. Correct.

23 Q. Okay.

24 A. And, you know, just as -- as others have
25 mentioned, we -- there's a lot of competition now that's
26 just non-dairy. I mean, we are competing against anything
27 that has to go in the refrigerator.

28 Q. And when you talk about particularly, I think,



1 your Fairfield plant and the change in -- proposed change
2 in differential versus the changes to L.A. County
3 specifically, does that Fairfield plant ship milk down to
4 L.A.?

5 A. Near. It -- it gets -- gets fairly close there.
6 Something equivalent to down that far, yes, but the other
7 side of the -- the other side of the valley.

8 Q. Okay. So like around Bakersfield or --

9 A. So, no, more the coastal areas.

10 Q. Oh, that side.

11 A. But as far south, yes.

12 Q. Okay. I have to relearn my California geography
13 that I knew during the California hearing.

14 And then on page 5 of this statement, in the
15 second half of the page, you mentioned that your Fresno
16 facility is two miles away from the region's cooperative
17 balancing plant. And you say that it doesn't make sense,
18 Proposal 19 doesn't make sense when you look at Shehadey's
19 facility relative to the milk shed, the population, as
20 well as the balancing facilities.

21 And I wondered if you could just expand on that
22 balancing facilities part, why that's important to you, if
23 milk comes from that balancing facility to supply your
24 plants sometimes, or kind of how that fits into the
25 equation for you in particular?

26 A. Well, I think as we look at the Class I
27 differential, we talk about incentives to deliver a
28 Class I facility, I think being that close to the



1 balancing plant, I think there's plenty of incentive that,
2 you know, the Class I milk price is already higher,
3 there's a differential, there's over-order premiums, and
4 we're -- you know, if it's not coming to us, it's going to
5 go to them, right? And we're -- we're two miles away, so
6 I have -- it just -- it feels like all the incentive's
7 already -- already built in.

8 Q. That they would ship it to that manufacturing
9 facility regardless?

10 A. Get turned into powder or butter.

11 Q. On the next page you are talking about your -- you
12 talk about your Fairfield plant and the premiums you need
13 to pay there versus pooling milk from Arizona.

14 Is it that you pay premiums in some -- for some of
15 your plants and not for others?

16 A. No. So we pay premiums at all of them. The
17 Arizona piece was -- was me discussing facilities in
18 Southern California as compared to the supply in Northern
19 California. In Northern California, our supply first
20 comes to Northern California, then from Central
21 California. And then as you go further south, it comes
22 from Central California, and then if they can't get it
23 there, it comes out of Arizona.

24 We're just trying to say the secondary supply in
25 Fairfield is still very close. It's -- it's a couple
26 hours away and it is flat.

27 Q. And you pay premiums in your Fairfield plant?

28 A. Yeah, we pay premiums in all four.



1 Q. Okay. And those premiums you pay, kind of what's
2 your understanding of what costs those are supposed to be
3 recovering for whoever your supplier is?

4 A. Administrative costs, hauling fuel, balancing, so
5 that's -- I guess that's where we -- we assume it covers.

6 Q. And when you -- how often are those negotiated?

7 A. It's usually every two to three years --

8 Q. Okay.

9 A. -- initially. And then, you know, typically
10 there's yearly rollovers, or you know, something that
11 triggers some type of a -- you know, a date to propose a
12 change either direction. Like, we can propose -- they can
13 propose at certain periods. But typically, initially it's
14 a two-year -- two-year contract.

15 Q. So if Proposal 20 was adopted and the base
16 differential went to zero, and you had indicated that you
17 would -- it would be the business's goal to pay that money
18 out to your direct suppliers, are you concerned that your
19 competitors not also pay that full amount?

20 A. Yeah. I mean, obviously that's a possibility. I
21 think that's -- you know, that's something that, you know,
22 we would -- we would hope that, you know, people would
23 take that proposal and determine: A, either we need to
24 benefit the farmers out of this; or B, you know, how can
25 we -- how can we better the Class I industry. But I
26 would -- I'd hope that we would -- we would direct money
27 back to where it should be.

28 Q. And if that didn't happen, what would be the



1 impact to your business? What could be the impact to your
2 business?

3 A. The impact could be, you know, obviously getting
4 outbid for cheaper prices to some of our -- you know, to
5 some of our retailers. And there's always -- you know,
6 there's obviously that possibility. You know, the \$1.60,
7 I feel, belongs to -- to who is servicing our facility.

8 Q. Two more questions that I realize I wrote down a
9 long time ago. I'm sorry. These are probably out of the
10 blue.

11 A. No, you are fine.

12 Q. On your -- your Class I products, what's the shelf
13 life on those products generally?

14 A. 18 to 21 days. Depends on what filler and what
15 line and what plant.

16 Q. And then in talking about getting your milk supply
17 in, are there times that you all reject a load for a
18 various reason?

19 A. There are a few instances of that happening, very,
20 very irregularly. And that's typically due to temperature
21 or bacteria counts. But not -- not common enough to --
22 you know, for it to be, you know, much of a discussion.

23 Q. And then -- but when that happens, does your
24 supplier backfill to get you whole to what you expected to
25 get in, or you just kind of don't process as much as you
26 anticipated?

27 A. Yeah, I mean, we would -- we would -- I mean,
28 in -- in a specific example, it was our own supply that



1 did it, and because it was -- the trailer was -- the milk
2 was too hot. And so, you know, we just -- we just got an
3 extra load the next week.

4 We don't typically carry -- you know, we buy above
5 our emergency amount, right? So, like, we can --
6 especially in Fresno, we can absorb a tanker here and
7 there that didn't show up.

8 Q. Okay.

9 A. Because we have -- we have -- we have a lot of
10 silos and a lot of milk storage there. So one -- one
11 tanker wouldn't -- probably wouldn't impact our day's
12 production.

13 Q. Okay.

14 MS. TAYLOR: I think that's it from AMS. Thank
15 you so much for your time.

16 THE WITNESS: Yep.

17 THE COURT: Are there any other cross-exam
18 questions for Mr. Ellis before I invite redirect?

19 There are none. Redirect.

20 REDIRECT EXAMINATION

21 BY MS. VULIN:

22 Q. Mr. Ellis, I want to start where Ms. Taylor left
23 off.

24 If Shehadey Family Foods is paying this \$1.60, or
25 part of the \$1.60, as an over-order premium to its
26 suppliers, assuming Proposal 20 was adopted, wouldn't that
27 make Shehadey a more attractive place for suppliers to
28 sell their milk?



1 A. Yes, it would. And I guess that's -- that's
2 really what, you know, my thoughts are in regards to
3 incentive to serve Class I. That gives an increased
4 incentive to serve Class I.

5 Q. And so to the extent Shehadey's competitors aren't
6 redirecting that \$1.60, or as much of it as Shehadey is to
7 their suppliers, really that's just a competitive
8 advantage that Shehadey could use to attract more milk, if
9 needed?

10 A. Correct.

11 Q. Or attract higher quality supplies of milk, if
12 needed?

13 A. Yes.

14 Q. And is it fair to assume that whatever portion of
15 the \$1.60 is redirected to farmers versus used for
16 internal innovation, plant repairs, and improvements, that
17 will be driven by competitive factors, correct?

18 A. Correct.

19 Q. If Shehadey needs more milk, it can direct more of
20 the \$1.60 to its suppliers, correct?

21 A. Yes.

22 Q. Or if Shehadey wants to try and grow its sales,
23 would that benefit its suppliers as well?

24 A. Yeah, it would.

25 Q. And so if Shehadey uses some portion of the \$1.60
26 to develop a new or innovative product, that would be
27 another way to utilize that money in benefit of Shehadey's
28 suppliers, correct?



1 A. Yes, it would.

2 Q. Okay. And likely across the industry, every
3 processor would make that individual calculation about
4 where that \$1.60 can best serve its operations?

5 A. Yeah.

6 Q. And to the extent Shehadey was utilizing that
7 \$1.60 to pay its suppliers more money, that -- that would
8 be something that it could -- that wouldn't necessarily be
9 a secret, correct? Shehadey could put out there publicly
10 that it was trying to attract more suppliers by using that
11 \$1.60 that way?

12 A. Yeah.

13 Q. And in discussing the balancing and the issue of
14 attracting milk to Shehadey's Fresno facility that's
15 located so closely geographically to that balancing plant,
16 do you recall that discussion?

17 A. Yes.

18 Q. So Class I vis-à-vis that balancing plant is going
19 to typically have the highest price within the FMMO
20 system, correct?

21 A. Yes.

22 THE COURT: A little closer to the mic. Thank
23 you.

24 BY MS. VULIN:

25 Q. And you received some questions from Ms. Hancock
26 on Shehadey's ability to extrapolate its competitors'
27 prices based on having a larger portion of the price as a
28 fixed price within the FMMO system, as the base Class I



1 differential, versus more of the price determined by
2 competitive factors and over-order premiums.

3 Do you recall that discussion?

4 A. Yes.

5 Q. And would Shehadey be more interested in being
6 able to control the competitive factors of its milk supply
7 through freeing up that money or having more certainty as
8 to higher but base Class I price?

9 A. We -- we are much more interested in having those
10 discussions be part of an over-order premium. We view the
11 minimum milk price as that, it's the minimum price. And
12 then the locational or regional economic factors would go
13 into determining what the price of milk should cost at the
14 receiving facility.

15 Q. Does Shehadey have any fears about what would
16 happen if it was able to negotiate and manage its milk
17 supply using market factors and standard economic forces,
18 much like most other industries do?

19 A. I think, you know, obviously, there's risk in
20 every -- in any decision you make in any direction you go
21 with it. But I think the benefit of having those factors
22 outside of the pricing formula is it allows quicker
23 adaptations to changes, right? Similar to the fuel example
24 I gave you: Fuel went up, charges came in.

25 And if -- if there's, you know, massive changes
26 to, you know, inflation, or there's economic factors
27 that -- that are out -- you know, unforeseen, you are able
28 to adapt to those things a lot better. And it -- it can



1 create long-term contracts with -- with escalators and
2 de-escalators based upon certain -- you know, certain
3 things that you -- you know, you use as a base.

4 Q. And that ability to adapt quickly to market
5 circumstances would be a benefit to processors; is that
6 right?

7 A. Benefit to the processors, and I believe it would
8 be a benefit to suppliers as well to know that, hey, for
9 the next five years or seven years, you -- I have got this
10 contract with this processor, and here's what can make my
11 price go up or down based upon -- you know, the different
12 factors out there.

13 But today, no one wants to sign anything more than
14 a couple of years because we don't -- we don't know
15 what's -- what the world's going to be like in two years.
16 You know, that's just -- so I think -- I think there's
17 benefits to both.

18 Q. Okay. To both processors and also suppliers?

19 A. Correct.

20 Q. Thank you.

21 MS. VULIN: Nothing further, Your Honor.

22 THE COURT: Mr. Ellis, you have had an amazing
23 career with so many exciting things happen. I don't know
24 whether you were just in the right place or whatever, but
25 I applaud you for having taken on so much responsibility.

26 THE WITNESS: Thank you. I have enjoyed those I
27 have worked with, and it's been -- you know, it's a great
28 industry.



1 THE COURT: Great.

2 MS. VULIN: Your Honor, I would move admission of
3 Exhibits 480, 481, 482, and 483, please.

4 THE COURT: Is there any objection to admission
5 into evidence of Exhibit 480, also marked MIG/Shehadey-24?

6 There is none. Exhibit 480 is admitted into
7 evidence.

8 (Thereafter, Exhibit Number 480 was received
9 into evidence.)

10 THE COURT: Is there any objection to the
11 admission into evidence of Exhibit 481, also marked
12 MIG/Shehadey Exhibit 24A?

13 There is none. Exhibit 481 is admitted into
14 evidence.

15 (Thereafter, Exhibit Number 481 was received
16 into evidence.)

17 THE COURT: Is there any objection to the
18 admission into evidence of Exhibit 482, also marked
19 MIG/Shehadey Exhibit 24B, like boy?

20 There is none. Exhibit 482 is admitted into
21 evidence.

22 (Thereafter, Exhibit Number 482 was received
23 into evidence.)

24 THE COURT: Is there any objection to the
25 admission into evidence of Exhibit 483, also marked
26 MIG/Shehadey Exhibit 24C, like cat?

27 There is none. Exhibit 483 is admitted into
28 evidence.



1 (Thereafter, Exhibit Number 483 was received
2 into evidence.)

3 MS. VULIN: Thank you, Your Honor. I believe that
4 concludes the testimony of Mr. Ellis.

5 The Milk Innovation Group would next call Jacob
6 Schuelke with Crystal Creamery. We have some exhibits we
7 need to distribute, and he will need to get his PowerPoint
8 set up as well, so maybe five minutes off the record to
9 take care of those administrative tasks?

10 THE COURT: Let's take ten.

11 Everyone, please be back and ready to go at 10:30.

12 MS. VULIN: Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Ellis.

14 (Whereupon, a break was taken.)

15 THE COURT: Let's go back on record.

16 We're back on record at 10:31.

17 I'm first turning to the gentleman in the witness
18 chair.

19 Please state and spell your name.

20 THE WITNESS: My name is Jacob Schuelke, last
21 name, S-C-H-U-E-L-K-E.

22 THE COURT: You have previously testified in this
23 proceeding; is that correct?

24 THE WITNESS: Yes, and a few points in between.

25 THE COURT: You remain sworn.

26 JACOB SCHUELKE,

27 Having been previously sworn, was examined
28 and testified as follows:



1 MS. VULIN: Your Honor, everyone should have three
2 documents in front of them.

3 THE COURT: And, Ms. Vulin, we have got a new
4 witness, so I would like your name again, please.

5 MS. VULIN: Thank you. Ashley Vulin with the Milk
6 Innovation Group.

7 THE COURT: Thank you.

8 MS. VULIN: So first, we have Exhibit
9 MIG/Crystal-19, and we ask that that be marked as
10 Exhibit 484.

11 THE COURT: Yes.

12 (Thereafter, Exhibit Number 484 was marked
13 for identification.)

14 MS. VULIN: Second we have MIG/Crystal
15 Exhibit 19A, and we ask that that be marked as
16 Exhibit 485.

17 THE COURT: Yes.

18 (Thereafter, Exhibit Number 485 was marked
19 for identification.)

20 MS. VULIN: Finally, we have MIG Exhibit
21 Crystal -- MIG/Crystal Exhibit 19B, and we ask that that
22 be marked as Exhibit 486.

23 THE COURT: Yes.

24 (Thereafter, Exhibit Number 486 was marked
25 for identification.)

26 //

27 //

28 //



1 DIRECT EXAMINATION

2 BY MS. VULIN:

3 Q. And, Mr. Schuelke, the first two documents,
4 Exhibits 484 and 485, are your written testimony for
5 Proposal 20 and your opposition testimony, correct?

6 A. Yes.

7 Q. And Exhibit 486 is your PowerPoint presentation
8 you are going to give here today?

9 A. Yes.

10 Q. And if we could please pull up the PowerPoint
11 presentation.12 So, Mr. Schuelke, I know you have testified
13 previously, but can you please remind us about your role
14 at Crystal.15 A. I am the CFO at Crystal Creamery. I'm also in
16 charge of milk procurement and commodities.17 Q. And can you give us just a brief summary of your
18 background in the dairy industry.19 A. I very much grew up in the dairy industry, growing
20 up on a dairy farm in New York. Both of my academic
21 degrees are in dairy business-related fields.

22 Q. What are those degrees?

23 A. An undergraduate degree in agricultural business
24 from Cornell University, primarily focused on dairy farm
25 business management, and a master's degree from the
26 University of Wisconsin, focused on dairy economics.

27 Q. Thank you.

28 A. And since then, my career initially started with



1 the University Extension Service as an agricultural
2 business management educator, and since then I have been
3 working in the private sector for a variety of companies
4 in agricultural economics and finance-related positions.

5 Q. In finance-related positions?

6 A. Yes.

7 Q. How long have you been at Crystal?

8 A. Three and a half years.

9 Q. And if we could -- I was going to say the next
10 slide, but we're there.

11 Can you please remind us what products Crystal
12 makes.

13 A. Crystal Creamery is the number one brand of milk
14 in Northern California. We are primarily known as a fluid
15 plant. We are also a very large producer of Class II
16 products, ice cream, and cottage cheese, and we have
17 Class IV powder drying facilities.

18 Q. I like how Mr. Ellis referred to summer as ice
19 cream season. I'm going to start doing that, I think.

20 A. Every day at Crystal Creamery is ice cream season.

21 Q. I like that even better.

22 Where are Crystal's plants located?

23 A. We have two facilities. Our main facility is in
24 Modesto, California. That is where the bulk of our
25 production takes place. And we have a much smaller
26 facility in Humboldt, California, that is primarily
27 focused on organic and ice cream production.

28 Q. And at the Modesto facility, what is the breakdown



1 for this plant of Class I products versus other class
2 products?

3 A. We probably are 40% Class I and the remainder
4 equally split between Class II and Class IV.

5 Q. And the Humboldt plant, similar question, what is
6 the breakdown between Class I products manufactured there
7 and other classes?

8 A. The Humboldt plant is primarily an ice cream
9 plant. I don't know the percentages. And we do a lot of
10 powder manufacturing up there. We have a tiny bottling
11 operation. And by that, I mean one to two trucks a week
12 of organic milk we might bottle up there.

13 Q. So does the Humboldt milk have enough Class I that
14 it has to be pooled?

15 A. No.

16 Q. And if you could go to the next slide, please.

17 I'm sorry, one more question.

18 Your Class I that you manufacture at your Modesto
19 plant, is that HTST, ESL?

20 A. HTST.

21 Q. Thank you.

22 So we can go to the next slide now.

23 I know when you previously testified you spoke
24 passionately about supporting direct ship farmers.

25 How do you think FMMOs are failing Class I direct
26 ship farmers?

27 A. Well, what I have here on this slide is a graph
28 that Phil Plourd, who is an economist, did at a California



1 Creamery operators meeting showing the history of PPDs
2 that the Federal Order system has been generating since
3 1970.

4 For those of you reading the transcript, what you
5 will note is that from the period of 1970 to the year
6 2000, the system very stably was able to generate about
7 the manufacturing class price plus \$1 per hundredweight.
8 These -- the manufacturing class price used here is
9 Class III. A better proxy for what the system should be
10 able to generate in a California order would probably be
11 the average of Class III and Class IV, because that is the
12 local manufacturing base.

13 Q. So let me stop you there.

14 When you say that the system was able to generate
15 about \$1 above the PPD, what does that mean for direct
16 ship farmers? How -- how are they impacted by that?

17 A. What this means is that there is an incentive to
18 move milk to fluid plants. They are able to generate a
19 pay price that is above the local manufacturing price.

20 Q. In other words, if a local manufacturing plant did
21 depool or could depool, it would still be beneficial for
22 the farmer to choose the Class I plant over that Class III
23 plant?

24 A. Yes.

25 Q. Thank you.

26 So then what happens after the year 2000?

27 A. In the year 2000, as the market started off, you
28 will initially note some stability for the -- or



1 volatility for the period of 2000 to 2005, but it was
2 still achieving very good pay prices that were above the
3 manufacturing price.

4 Over the period of 2005 to 2015, you would see a
5 gradual decline in the average PPDs that the system was
6 able to generate. I would generally attribute this to
7 declining Class I sales and a growing manufacturing base
8 to where the system was no longer able to generate dollars
9 and spread it the same way across the manufacturing base.

10 Q. And so once that PPD crosses the threshold of \$0,
11 once it's down in the negative range, what does that mean
12 for a supplier who chooses to supply a Class I processor
13 versus a Class III processor who can depool?

14 A. There is now no incentive to supply milk to a
15 Class I plant. If you were equidistant from a Class I
16 plant and a manufacturing plant, you would now have no
17 incentive to supply the Class I plant.

18 Q. And you said you think there are two contributing
19 factors that are causing this disincentive to service
20 Class I, and that's: One, the declining utilization of
21 Class I and the marketplace; and two, the increasing
22 prominence of manufacturing classes in the marketplace; is
23 that right?

24 A. Yes. And that's what you would see in the period
25 going forward of the last years where you have a double
26 impact from depooling of manufacturing milk and also a
27 continually declining Class I market. So now you have the
28 impact where there's even less Class I revenue in the



1 system, and the manufacturing base is now a Class III and
2 Class IV split, so it does not contribute equally anymore
3 as well. What you will see is that over the last five
4 years, the average pay price generated is now the
5 manufacturing price minus \$1.

6 Q. In these conditions, the low Class I utilization
7 and the increasing role of manufacturing classes, do you
8 expect those conditions to either continue or grow in the
9 future, or do you think that there is potential recovery
10 from this scenario?

11 A. Under the current set of rules, this negative
12 trend that we have seen over the last five years is likely
13 to get worse.

14 What I would like to share is a personal story.
15 My employer used to be a very large dairy farm in the
16 state of California. I cannot testify here as a dairy
17 farmer, so I must do so post-humorously (sic).

18 But our experience with this pay price over the
19 last five years was simply untenable. My dairy farm
20 management background began with my undergraduate degree,
21 where I was -- my faculty advisor was Wayne Knoblauch, who
22 I would consider the preeminent professor on dairy farm
23 business economics. He ran a program called the Cornell
24 Dairy Farm Business Summary. And in that program we would
25 go out and collect data from dairy farms and analyze them,
26 look at their production practices, and then come up with
27 trends, and say, successful dairy farms tend to do these
28 things, unsuccessful dairy farms tend to do these things.



1 I want to share the story of the dairy farm that we had.

2 The dairy farm that we had was about 6,000 cows.

3 The dairy barn that they were in was finished construction
4 in the year 2015 at a cost of \$15 million. It was the
5 most modern, advanced, beautiful, efficient dairy farm in
6 the county. The cows on that farm were producing over
7 100 pounds of milk per day. We were the DHIA -- which
8 stands for Dairy Herd Improvement Association, and it's an
9 agency that independently audits your records and shows
10 you how you are doing. We were the top dairy farm in
11 Stanislaus County, California, which is saying something.
12 We had a somatic cell count of 150,000, and the bacterial
13 counts on our milk were nonexistent. This was a top dairy
14 farm.

15 Under this pay price they asked me, what should we
16 do? And I said, you got to ride out the next high price
17 cycle and sell out. Because if your pay price is the
18 manufacturing price minus \$1, you got to go. You will not
19 survive the next downturn. And that's what we did.

20 The pain did not end there. We thought that we
21 could sell that farm, being such a great facility.
22 However, the number one question when your dairy farm
23 assets are for sale is not what condition of barn it is,
24 it's what kind of milk contract comes with this farm?
25 That milk contract was the best contract in the state.
26 Correct? It had no caps. You could make as much milk as
27 you want and you were guaranteed the blend price.

28 So when we put this farm for sale on the market,



1 what do you think happened? Every single farmer in the
2 area knew what that contract was and they passed on the
3 facility.

4 Q. Because the contract was with a Class I processor?

5 A. That was the only one you can get. You are not
6 able to ship to other handlers, they are currently closed
7 in the state. So that farm sits vacant, and it will
8 probably be bulldozed.

9 THE COURT: That is stunning.

10 This is trivial compared to what you just told us.
11 I need the spelling of your professor, the excellent
12 agricultural professor.

13 THE WITNESS: Oh, God. It's like the German word
14 for garlic. K-N-O -- no -- I can't even buy a vowel. You
15 are going to have to Google it.

16 MS. VULIN: I'm sure we can provide it to the
17 court reporter at a break.

18 THE COURT: All right. And this was a professor
19 at what --

20 THE WITNESS: Cornell University.

21 THE COURT: At Cornell. All right.

22 THE WITNESS: And so he trained me on how to
23 analyze dairy farm profitability.

24 THE COURT: Thank you.

25 BY MS. VULIN:

26 Q. I appreciate that story.

27 And, Mr. Schuelke, I know that you have also
28 prepared an example to demonstrate through -- numerically,



1 on what that experience is like for a Class I supplier in
2 the new world we have within the Federal Order system. I
3 know you presented a similar example, but I want to
4 reorient all of us.

5 So just to start with, can you tell us what each
6 column represents so we know what data we're looking at.

7 A. The -- what I have here is a simple pool class
8 model with three participants: A Class III participant, a
9 Class IV participant, and a Class I participant, in an
10 order like California, where the end use utilization is
11 typically 45% Class III, 45% Class IV, 10% Class I.

12 And if all participants -- an example of, if the
13 Class III price is \$20 --

14 Q. Sorry, I just want to -- a couple of questions
15 about the meaning of the data really quick.

16 So we have three examples here is my
17 understanding.

18 One is a point in time, a month that cheese
19 manufacturers are incentivized to depool, correct?

20 A. Yes. That would be because the cheese price is
21 \$20, the Class IV price is \$15, and the Class I price is
22 \$19.94.

23 Q. Okay. And just before we dig into the numbers,
24 sorry, I just want to orient our columns.

25 So we have one example that is a cheese depool
26 month, correct?

27 A. Yes.

28 Q. And then we have a second example that the inverse



1 is true, that powder is incentivized to depool, correct?

2 A. Yes.

3 Q. And then you looked at what the average would be
4 if you have both of those months happening equally
5 throughout the year, correct?

6 A. Yes, or any period of time, a five-year average.

7 Q. Excellent. Thank you.

8 So we'll go back to the cheese depool month.

9 So explain to us what those columns, perception
10 and reality, are for those prices, please.

11 A. So, yeah. I also wanted to show the Class I price
12 in this example is \$19.94, because it's the current
13 formula. The average of the Class III and IV price, plus
14 my plant, which is a 1.70 differential, plus \$0.74, so
15 that's why it's 19.94.

16 Q. And 19.94 would be the minimum Class I price under
17 the Federal Order formula, correct?

18 A. Yes.

19 Q. Thank you.

20 THE COURT: Okay. That's \$19.94?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MS. VULIN:

24 Q. Okay. So then tell us, what are the Class III and
25 IV prices? Are those also the announced minimum Class III
26 and IV prices?

27 A. Yes, in this hypothetical month.

28 Q. And the announced Class III price is \$20, and the



1 announced Class IV price is \$15, correct?

2 A. Yes.

3 Q. Okay. So then let's move down to the next rows,
4 utilization.

5 Can you walk us through what those are, please.

6 A. So these would be where milk is sold would be --
7 your perception if everything was blended, and in the next
8 column would be if the Class III participants were to
9 depool.

10 Q. And in this scenario, when Class III is \$20 and
11 Class I is \$19.94, Class III would have to pay into the
12 pool if they chose to pool, correct?

13 A. Yes, they would.

14 Q. And so in this scenario, even though Class III
15 seemingly should make up 45% of the pool, they have chosen
16 to depool because that's economically advantageous,
17 correct?

18 A. Yes.

19 Q. Great. Thank you.

20 So walk us through then, how we get the blend in
21 each of those scenarios.

22 A. So the blend is a simple range average. If
23 everyone pooled, everyone would get \$17.74. If cheese
24 depooled, the -- you would only have Class IV and Class I
25 in the pool, now everyone gets 15.49.

26 THE COURT: That's \$15.49?

27 THE WITNESS: Yes.

28 ///



1 BY MS. VULIN:

2 Q. And so then looking at the pay price, walk us
3 through what the pay price would be if everyone pooled and
4 what the pay price is for a supplier to each of these
5 classes in reality.

6 A. So, yes. In reality, in the pay price to the
7 person who supplied the Class III plant would be the \$20,
8 and the pay price to both the Class IV and Class I
9 participant is the blend, which is \$15.49.

10 Q. So for a supplier, it's equally advantageous to
11 ship to a Class IV or a Class I supplier in this month
12 because they both receive the same uniform price, correct?

13 A. Yes.

14 Q. But if you are a supplier shipping to Class III,
15 you have gained an advantage over Class I for a cheese
16 depool month, because your processor did not have to
17 participate in the pool, correct?

18 A. Yes.

19 Q. Thank you.

20 So the powder depool month, as I understand it, is
21 the exact same example, just the inverse when powder is at
22 a higher price than the blend; is that right?

23 A. That is correct.

24 And I would just say, the next one -- column is
25 the average, and what this is, is the average-of both
26 columns cheese and powder. So as you look at that column,
27 you want to average all of the columns before, and that's
28 the result that you are going to get.



1 And for -- the points to point out in this is that
2 sometimes we can't see the forest through the trees. When
3 we see this happening in any one month, someone is going
4 to look at this and complain, and say, "Hey, do you
5 remember that one month where the Class I price was \$0.06
6 below the Class III price? Boy, that made me mad."

7 I want everyone to take a step back and look at
8 the five-year average. On average, the Class III and IV
9 participants paid \$17.50 into the pool, I paid \$19.94. On
10 average, the shippers to the manufacturing plants got
11 \$17.75, and my farmers got \$15.49.

12 Q. And so in other words, when you supply to Class I,
13 you might be tied for last place, but over time you will
14 always be in last place?

15 A. Yes.

16 Q. And is this example why you believe the FMMO
17 system is actually disincentivizing service of Class I
18 processors?

19 A. Yes.

20 Q. And that was your list example with Crystal's
21 farm, correct?

22 A. Yes.

23 Q. Okay. Anything else you would like to add on this
24 chart?

25 A. That -- that's fine.

26 Q. I think that's quite a lot for all of us to
27 digest, certainly.

28 So the next slide, can you tell us just generally



1 why Crystal supports Proposal 20.

2 A. The general thing I want to say, first and
3 foremost, is that I would like to take the base payment
4 and turn it into a credit. If the current system is
5 paying farmers an average of the manufacturing price minus
6 \$1, if we all of a sudden turn it into \$1.60 credit, now
7 it pays those shippers the manufacturing price plus \$0.60.
8 We fix the problem.

9 Q. And Milk Innovation Group did propose some
10 proposals that would have worked somewhat similarly to
11 that concept, correct?

12 A. Correct. It guarantees payment to the farmers
13 that's fair and equitable. It also guarantees stability
14 in the system. If we want to ride this system down with
15 Class I utilization, I think we know where it all ends.
16 If we can find a stable solution to where now people want
17 to ship to Class I, we now innovate. We provide
18 incentives. People want to build new plants to develop
19 new products to chase this credit. And now we have a
20 system that -- where the USDA can be firmly founded, and
21 now we can grow out the marketing services that the
22 manufacturing sector really needs, particularly milk price
23 check transparency.

24 People need to know what everyone's paying. We
25 hear that in this order all the time. Okay. That person
26 depooled, what's their farmer getting paid? We don't have
27 to disclose that, but we can add information to help our
28 dairy farmers market. That's where I want to grow. I



1 want to grow with USDA.

2 Q. And we have heard questions to various witnesses
3 on, what would you do with that \$1.60 if it was taken out
4 of your pool obligation?

5 Do you have anything to share there for Crystal?

6 A. Well, again, there's carrots, and there's sticks.
7 If we use the carrot of a credit, I think we can all walk
8 in here unlikely friends. If all -- USDA doesn't want to
9 hear that and the only tool I have in my hand is a stick
10 or a hammer, all of a sudden everything starts to look
11 like a nail. Do I want to grow the base? No, it's
12 killing my farmers.

13 So my results -- or economic analysis is identical
14 to Dr. Mark Stephenson's. If you want to give me a number
15 within a range, that number is zero. And that'll kick
16 everyone out of the pool. You are not going to like it,
17 but it's going to be a more equitable outcome than what we
18 have today.

19 Q. And so thinking about the ways in which Crystal
20 could innovate with that \$1.60, I know that you have said
21 it's really about supporting the farmers for Crystal?

22 A. Yes.

23 Q. And that supports Crystal, right? It is not
24 altruistic purely, because you want to have a solid
25 quality milk supply for your plant?

26 A. Absolutely.

27 Q. So now let's get into the factors.

28 A. Yes.



1 Q. The first is Grade A milk. And I won't ask you
2 the same questions we have asked everyone else, which is
3 do you have any Grade B milk? Where do you find it?

4 But I know you do have some interesting insight to
5 share about a creditor incentive that the state of
6 California put in place that really didn't have much of an
7 impact in generating Grade B. So can you tell us about
8 that.

9 A. Yeah. First, I would like to share a comment on
10 Grade B milk. As someone who's spent a lot of time
11 looking at dairy farm profitability, the absolute worst
12 thing you could ever do to a dairy farm is say, "I think
13 I'm going to save money by trying to manage my dairy farm
14 to Grade B standards."

15 If you --

16 Q. Why?

17 A. If you want to have a profitable dairy farm, you
18 need to spend money. You need to invest. You need to
19 spend money on quality. You need to spend money on
20 sanitation. You need to spend money on cow comfort. And
21 if you take care of your cows, your cows will take care of
22 you.

23 There is no reason to incentivize dairy farmers to
24 put their somatic cell count below 750,000. We had our
25 farm at 150,000, and if we were to be in business, I would
26 have told my operators, "You need to lower that 5,000
27 every year into perpetuity, because I know there's a farm
28 five miles away, the same size, at 100,000 somatic cell



1 count, on the same cows. If we want to be viable and in
2 business, we got to be there, too."

3 Q. And I certainly wouldn't presume to know as much
4 as you or Dr. Velez or anyone else here, but my
5 understanding is, healthier cows make more and better
6 milk.

7 Is that a fair way to summarize it?

8 A. Yes. So that said, no one in California ever
9 produced true Grade B milk within the last ten years. The
10 Grade B programs were loopholes of legacy regulation to
11 avoid pooling regulations and taxation, nothing more.

12 In fact, I worked at one of the handlers, and we
13 used to have a quality report. Our Grade B shippers used
14 to ship higher quality milk than the Grade A shippers. It
15 was just that. No one ever made Grade B milk. It --
16 there's no incentive to. It does not make sense. But
17 that -- it did avoid a tax.

18 However, despite a tax avoidance, it ultimately
19 became unmanageable to have a Grade B milk supply in a
20 Grade A world, because if you operate a dairy plant, your
21 creams, your spot milks, your products were unmarketable,
22 and it just couldn't manage despite the fact you could do
23 it to avoid a tax.

24 Q. And that's -- California -- just so I understand
25 and for the record -- California had established a \$0.40
26 economic incentive that would be paid to farmers who were
27 Grade B; is that right?

28 A. No. There was a tax that the state found they



1 could only levy on Grade A milk, so you could go Grade B
2 with your Grade A dairy and avoid paying the tax.

3 Q. A reduction in your tax, not a payment?

4 A. Yes.

5 Q. Thank you for clarifying that for me.

6 And even with that \$0.40 per hundredweight
7 incentive, there were very few, if any, farms that you
8 said that took advantage because it was so unattractive to
9 processors?

10 A. The processors who offered it as a procurement
11 tool found out that it wasn't worth it. The costs of
12 trying to be Grade B in a Grade A world were greater than
13 \$0.40 per hundredweight.

14 Q. And these were all manufacturing class processors,
15 correct?

16 A. Yes.

17 Q. So now let's talk about balancing.

18 What are the ways in which Crystal balances its
19 milk supply?

20 A. The primary way that we balance our milk supply is
21 with our powder plant. There are ten major powder plant
22 dryers in the state of California, and our Modesto
23 facility is one of them. It provides balancing services,
24 both to our direct ship supply, our plant, and the greater
25 industry in general.

26 Q. And can you remind me, is Crystal's milk supply,
27 is it all independent farmer direct ship, is it all
28 cooperatives, or some mix of those?



1 A. It used to be much larger direct ship, upwards of
2 50 loads a day direct ship. It is now down to about 20,
3 and we have backfilled in with primarily cooperatives and
4 manufacturers.

5 So what I would like to say about that, is that
6 operating the only regulated and mandatory pooled powder
7 plant in the state of California is extremely difficult.
8 When my plant goes down and I need to sell spot milk to
9 avoid it from going on the ground, oftentimes people will
10 say, "No problem, how about class minus five?"

11 However, when my neighbors break down and they ask
12 me for help, it's always, "Sell it to Jacob because he
13 can't pay you less."

14 So I do help out, even though the Make Allowances
15 don't cover it, and even though I'm in California, meaning
16 that when I go to sell my finished products, I'm going to
17 take a \$0.05 per pound discount on my powder and my butter
18 on top of what NASS reports, that's the CME standard
19 discount, I'll still run it. But it's extremely difficult
20 to compete in a world when all of your competitors can buy
21 milk at such a lower price.

22 Dairy farmers oftentimes share their milk checks
23 with me from farms who ship to the other nine powder
24 plants in the state. Based on those checks, you can infer
25 that they are not paying Class IV for milk. I have the
26 only powder plant in the state of California that has ever
27 paid fully Class IV and pooled it on every drop of milk
28 that's ever entered it.



1 Q. And that's because of its association with your
2 Class I plant?

3 A. Yes. It is a large disadvantage for me.

4 Q. And do Crystal suppliers ever undertake any
5 balancing efforts?

6 A. As I mentioned before, our suppliers might not,
7 but if something's wrong, I might tell my direct ship
8 farmer, "We have four-hour waits to unload today, so I'm
9 going to tell you to go unload over here and I'll settle
10 up with that handler." I'll take care of my direct ship
11 farmers.

12 And, similarly, like I said, I still provide that
13 service to the industry. If somebody else's plants goes
14 down, I will help them out. If my plant goes down, they
15 will help me out, but not on equal terms.

16 Q. And does Crystal pay its farmers -- or excuse
17 me -- its suppliers any over-order premiums?

18 A. Yes, we do.

19 Q. Can you tell us a little bit about those? Do they
20 include balancing? Is that ever part of the discussion?

21 A. No. All of our contracts with dairy farmers, you
22 can ship me everything, and we pay a base premium plus a
23 quality premium on top of that. And most of our contracts
24 with the cooperatives and manufacturers are fixed volume,
25 very steady volumes that align with their milk supply, and
26 they know that I know how to manage it.

27 Q. So you have heard previous testimony, it sounds
28 like over-order premiums operate somewhat differently in



1 every relationship between a supplier and a processor.

2 Is that about fair?

3 A. Yes.

4 Q. And lastly, on Proposal 20, and just to kind of
5 tie up your previous testimony, do you think that the
6 \$1.60 being paid into the pool helps incentivize service
7 of your Class I operation?

8 A. No.

9 Q. In fact, the opposite --

10 A. Yes.

11 Q. -- is that right?

12 A. 90% of the money goes to the manufacturing base,
13 and I often feel that it is used against my direct
14 shippers, not for them.

15 Q. Let's go to the next slide, please.

16 So I understand Crystal opposes Proposal 19. Can
17 you tell us a little bit about the milk supply around your
18 operations.

19 A. Certainly. I also want to start off about the
20 model. When I was at Cornell, my favorite professor, and
21 the only one who I ever got an A-plus in, was Jim Pratt.
22 Jim Pratt did a lot of the initial work on the location
23 differential model, and is what probably inspired me to go
24 on to Wisconsin to get a degree in agricultural economics.
25 So I just wanted to say I'm very familiar with this model
26 and how it works.

27 But specific to California, I wanted to highlight
28 that when we talk about regional changes, no other change



1 has happened more in the last 20 years than in Southern
2 California. Southern California has lost almost 80% of
3 its milk supply in 80 years. We have gone from a robust
4 manufacturing sector to one that now imports milk from
5 100 miles away, yet, no one noticed, because over-order
6 premiums work.

7 However, if people want to come up here on this
8 stand and say, "My region lost milk, therefore," how come
9 Tulare doesn't get a bonus? It just doesn't flow.

10 Similarly, I want to talk about Humboldt. And
11 this is not a fault of the model, but the changes to
12 Humboldt show that that area now needs to export milk
13 based on its new differential slope, which is a chuckle.
14 Because if you believe that, the agricultural products
15 that you have been consuming from Humboldt are not
16 dairy-based. There are zero conventional cows in that
17 region. All of the cows up there are organic, and we are
18 the primary seller of milk up there. All of that milk is
19 bottled in Modesto and trucked up.

20 So while here I'm not picking on the model, I'm
21 just saying, I know what happened. Somebody thought that
22 there were 16,000 conventional cows up there. Well, there
23 aren't, and that's not how milk moves up there.

24 Overall, though, I do want to say to L.A., in the
25 model, we're talking about a \$0.90 increase. And what's
26 the consumer getting for that? They are not getting a
27 greater incentive to move milk into their area, which is
28 the largest newly deficit area in the country. I don't --



1 I don't understand this.

2 Q. Thank you. We can go to the next slide, please.

3 So now let's talk about Proposal 21. Remind us
4 what Class II products Crystal manufactures, please.

5 A. We are a large manufacturer of ice cream, cottage
6 cheese, buttermilk, pretty much everything under the sun.

7 Q. Because Crystal is a Class I facility, is Crystal
8 able to depool any of its Class II milk?

9 A. No, we are not.

10 Q. So walk us through then why you believe that
11 Proposal 21 should be rejected.

12 A. Here it just raises the Class II price. And as we
13 all know, that's a market where manufacturers have
14 options. In fact, I have one customer with an annual
15 supply contract, and written into their contract is, every
16 month I can choose to buy either condensed or powder,
17 based on what I feel is the better price, and I supply
18 them whatever.

19 But under this proposal, I feel that the rewetting
20 of powder is going to happen a lot more, and that's a bad
21 thing.

22 Q. Why is that a bad thing?

23 A. It, obviously, offers lower payments to the
24 farmer. If I'm buying Class IV milk, drying it, and then
25 rewetting it instead of just using it fresh out of the
26 cow, there's a lower payment to the farmer and a lot of
27 wasted costs, which are environmentally unsound.

28 Q. And have you -- do you have any observations on



1 whether or not consumers would prefer a product coming
2 from fluid milk as opposed to rewetted powder?

3 A. I don't think they would notice. You would not
4 know from reading the label, but after they ate it, they
5 might notice it doesn't taste the same. And you would
6 then say, "Greek yogurt used to be different. I don't buy
7 that brand anymore." But given the added cost, I feel
8 manufacturers would be forced to do so, and it doesn't
9 represent our products well as an industry.

10 Q. And given that Crystal cannot depool its Class II
11 products, does it feel like it would be unfairly impacted
12 by this change, even though it's selling products that are
13 identical to standalone Class II facilities?

14 A. Yes. We at Crystal would never rewet powder to
15 make our Class II products. We are a premium brand. But
16 at the end of the day, the consumer is simply going to pay
17 more for the same product. And on average, they are going
18 to pay more for a lower quality product.

19 Q. And you -- I believe you have heard previous
20 testimony on elasticity and the impact of price increases
21 on purchases and consumption.

22 In your personal experience, when Crystal raises
23 prices on its premium branded products, what happens to
24 sales?

25 A. They -- they drop, and people try to substitute to
26 other brands or other products.

27 Q. And does Crystal make any private label products
28 in addition to branded?



1 A. Yes.

2 Q. And do you have anything to share about whether or
3 not Crystal is better off when it makes branded products
4 versus private label? Any --

5 A. We're just happy to be there. We'll -- we'll make
6 whatever. The customer is always right.

7 Q. I like that answer.

8 So let's go to the next slide, please.

9 Can you tell us, just before you get into
10 analyzing the data, what is the data on this chart?

11 A. The data on this chart is the Class II SNF price
12 since the year 2000.

13 Q. And where did you get this data?

14 A. I downloaded it from -- I think it's on one of the
15 Federal Order websites. They have an Excel file that's
16 great. It's full of every price you ever wanted to know.

17 Q. And so this is the Class II SNF price since 2000,
18 correct?

19 A. Yes.

20 Q. So walk us through what this data shows or
21 demonstrates about the Class II price, please.

22 A. What I wanted to point out here is that when these
23 formulas were developed, the market was very stable. If
24 you are a dairy dork, you will look at the stable line at
25 the beginning of this and remember a thing called the
26 butter-powder tilt. The government set the price for
27 powder so there was very stable markets. Since then,
28 however, we have become a global exporter, and our



1 Class IV market is driven by global factors, which
2 introduces high volatility.

3 Q. And do you see a lot of volatility over time in
4 this chart?

5 A. There are very volatile. You see swings of the
6 price in the magnitude of 100% in just a 12-month period,
7 and then back down again. And it's a normal occurrence.

8 Q. And if we could go to the next slide, please.

9 So, again, before you analyze the chart for us,
10 can you please just walk us through what data each colored
11 line represents.

12 A. Okay. So the lines here, the orange line would be
13 the current Class II SNF price, and the period that we're
14 looking at is 2021 to 2023. And this is the most recent
15 up-and-down price cycle for Class IV. So let's track
16 these prices over this.

17 Q. Sorry, what does the blue line represent?

18 A. The blue line is the CME nonfat dry milk spot
19 price. So this is what I have into my contract with my
20 Class II manufacturer. Do you want to buy CME previous
21 week's average powder this week, or do you want to buy
22 current month's Class II SNF condensed skim this week?

23 Q. And so let's stick with just the blue and the
24 orange line for now. So just to summarize, this is the
25 comparative price between Class II and Class IV, the
26 portion of those prices that's the calculus between, does
27 it make more sense to use powder and rewet it or to use
28 Class II fluid; is that fair?



1 A. That is correct. And what you will notice is that
2 when markets are moving up, you are going to want to use
3 conventional Class II SNF. However, when markets are
4 declining, class spot powder may be a better, a cheaper
5 price.

6 Q. Why is that? Just curious. Why does powder
7 decline on the way down?

8 A. It has to do with the price lags. So the CME sets
9 the price, then NDPSR reports the price three months
10 later, and then AMS reports the Class II price -- or a
11 couple weeks later, so there's -- there's an inherent
12 four- to six-week price lag here of the same price.

13 Q. So then tell us, what does the gray line
14 represent?

15 A. The gray line represents what the Class II price
16 would be under the proposed formula increase. And what
17 you see in the analysis I showed was in a downward price
18 cycle like this (indicating), the current formula offered
19 opportunity to lower your product cost by using spot
20 powder 20% of the time, however --

21 Q. Sorry, just to stop you there.

22 So 20% of the time the blue line went below the
23 orange line?

24 A. Yes.

25 Q. Meaning powder was cheaper than Class II?

26 A. Yes.

27 Q. And now we're comparing the blue line and the gray
28 line to see when powder would be cheaper than Class II



1 under Proposal 21?

2 A. Yes.

3 And what you will notice is, under this price
4 increase, the spot powder is now cheaper 50% of the time,
5 so it will -- it will cause this (indicating) to happen
6 more.

7 Q. And when you say "this," this volatility between
8 the Class II and IV price inverting between each other,
9 what does that mean for a Class II processor?

10 A. What this means to a Class II processor is that
11 with this change, you need to rethink your procurement
12 strategy. You might say now, 20% of the time it makes
13 sense to use powder, so maybe. But now you have got an
14 incentive where 50% of the time it might make sense to use
15 powder, so you're probably going to reorient your milk
16 procurement buying to buy more powder in the future to
17 take advantage of this.

18 Q. So under prices today, there are still moments in
19 time where powder is cheaper than Class II, correct?

20 A. Yes.

21 Q. But you are saying those are infrequent enough
22 that an operation that is using Class II can absorb those
23 periods of time, correct?

24 A. Yes.

25 Q. But if the Class II price were to increase, it
26 would be much more difficult to absorb those price
27 inversions when powder is cheaper than Class II, correct?

28 A. Yes. Or the -- the incentive to use the other



1 product is much greater now.

2 Q. Thank you.

3 If we could go to the next slide, please.

4 Lastly, I would like to talk about Proposals 1 and
5 2. I know we heard a little bit back in -- long ago, from
6 Mr. Ellis with Shehadey, about the California
7 fortification requirements.

8 But can you just give us a quick high-level
9 overview of those again, please.

10 A. In California we have a fortification standard in
11 that when you make certain products, you must add nonfat
12 solids to them to hit specific finished product targets.

13 So what happens today is we receive components
14 that are nowhere near achieving that target, so we must
15 fortify. We buy -- I would add condensed to my products
16 in order to meet those finished product targets. And our
17 primary objection to this is that the components we
18 receive now in -- are well below the new proposed
19 standard. So due to the California fortification
20 standard, I would have to pay twice for these products:
21 One, I would buy products to get up to the level that I
22 paid for, and then, next buy them again to get to the
23 California finished product standard.

24 Q. And the components that Crystal Creamery receives
25 today on average for its products, are those above or
26 below the average components in the state of California?

27 A. In the state of California we are always below.
28 How much below is going to vary. When it's the cheese



1 people in the pool, they tend to have higher components,
2 so I'm a lot lower. When it's the powder people in the
3 pool, it's closer. But I'm still always below in most
4 market report months.

5 Q. And you say here, "Higher components mean more
6 costs for processors from desludging."

7 Can you tell us first, what is desludging?

8 A. Desludging is the primary source of loss in a
9 dairy plant. It's when you run raw milk through a milk
10 separator, and it separates out the cream and skim
11 portions. No -- I don't care what you tell me -- no
12 separator is going to run for more than an hour, and
13 everyone runs them at 30 minutes or less before you have
14 to desludge.

15 And desludge means you stop milk, and you do a
16 quick wash with water to clean it out, and then get it
17 going again. Because as these separators run, they lose
18 efficiency. It might start out skimming out almost all
19 the fat, but over time, that's going to creep up and you
20 are going to have to stop, clean, start over, in order to
21 maintain your finished product target level.

22 If you move from 3.5% fat milk to 4% fat milk,
23 that is not a half a percent increase. That means there's
24 14% more fat in that milk. I'm now going to have to
25 remove 14% more cream from that milk, and I'm going to do
26 a lot more desludging to make that happen.

27 Q. And explain to us again, the loss of product and
28 the frequent desludging is because when you wash out the



1 line, there is product loss in having to do so; is that
2 accurate?

3 A. Yes. We are not going to mix milk and water, so
4 everything goes to the drain when we do this.

5 Q. And with the increased cream causing increased
6 desludging, won't Crystal also be obtaining more cream
7 that it can then use or sell otherwise?

8 A. Yes, it will. I would say for my competitors,
9 that's a problem. The average Class I plant exports cream
10 or sells it at a loss to their raw procurement milk cost.
11 So if I'm going to generate now, 14% more cream, I'm going
12 to have to procure more initial raw milk to do that. And
13 we hear people tossing out premiums, \$2, plus, plus, plus.
14 You are not going to sell your cream on the back end for
15 those kind of premiums, so they are going to have losses.

16 The main point here is, as components increase and
17 finished product target levels stay the same, it gets
18 harder and harder to process them, our costs go up. If
19 the customer were demanding it, that's great. But if not,
20 it gets costly.

21 Q. And if we could go back to the last slide.

22 This issue of consumers or customers preferring or
23 demanding more components, we have heard claims of that in
24 support of Proposals 1 and 2.

25 But in your experience, is it consumer demand that
26 has driven component increases in recent years or
27 something else?

28 A. No. What I wanted to talk about there is, I have



1 always been a proponent of trying to attain higher
2 components on your dairy farm. I felt it was a profitable
3 thing to do.

4 When we first switched over to the Federal Order,
5 a lot of places in New York were now switching over from
6 an SNF or skim pricing to now multiple component pricing.

7 Q. When you say "multiple people," are you talking
8 about the order or just agreements between individual
9 processors and suppliers?

10 A. Yeah. The order was changing, so the standards
11 upon which we buy and sell our milk changed. And when
12 that happened, I remember I was an intern for the local
13 extension agent, Zaid Kurdah -- Z-A-I-D, K-U-R-D-A-H --
14 and that was where I developed my first extension program.

15 We went to Cornell one day, and we talked to Mark
16 and Andy, and they explained all this to us. And we
17 developed a program talking about the new order, the
18 economic incentives, what it means to you, and we
19 delivered those programs across Central New York State. I
20 always thought it was a great thing for the farmers to do,
21 because now the system was paying you for it.

22 Similarly, when I moved to California, I worked
23 for a processor whose whole economic model was to pay
24 based on protein in an SNF market. And I thought it was
25 great. If your customer is willing to pay you for it, you
26 should do it.

27 But what's happening now is not that. It's that
28 base plans are in place --



1 Q. What is a base plan?

2 A. A base plan means that processors logically can
3 only process so much milk, so you as a dairy farmer can't
4 just make whatever you want and throw it at them. It
5 makes sense.

6 But what happens is a farmer --

7 Q. Sorry, just to close the loop there.

8 So a base plan is a limit on how much a certain
9 farm can produce?

10 A. Yes.

11 Q. And do processors or cooperatives put in place
12 those base plans, typically?

13 A. Both. Proprietary and co-ops, almost everyone in
14 the country, besides Crystal Creamery, has a base plan who
15 says, "You can't just ship me whatever you want, you can
16 only ship me one load a day of milk."

17 Q. And how did that drive component increases?

18 A. Because now they've finally read my extension
19 presentations. They realized, "If I can only ship one day
20 of milk, the best way to do it is with higher component
21 milk." And so that's what they are doing.

22 Q. They are realizing that if you can only ship one
23 load, you can get more money for that one load if there
24 are higher components.

25 A. Yes. And what I would like to say is if you are a
26 cheese plant or something else like that where you're
27 deriving value from the marketplace, that's great. But I
28 don't feel that's what's happening, and we're causing the



1 fluid consumer to pay for this in this policy outcome.

2 Q. Thank you.

3 So just in closing, any final thoughts for USDA as
4 they consider changes to the FMMO system and changes to
5 pay prices and Class I in particular?

6 A. My just final thoughts are, first and foremost, we
7 need to generate a system that generates fair pay prices
8 to the dairy farmers who we force into it. To force or to
9 have the majority in the order vote in place a bunch of
10 rules on the minority, and the majority can opt in and
11 out, but the minority can't, and then the system
12 systematically pays them a lower price than people making
13 the rules, is just a non-starter for me.

14 No matter what we do going forward, we need to fix
15 the pay price. A direct shipper should want to ship to my
16 plant. I should have a wait list like everyone else does.
17 I'm the fluid plant. You get the blend, it's guaranteed.
18 If I don't pay you that, the Sheriff comes to my plant and
19 repossesses my plant. It's what you want to be.

20 So I mean, that's -- we got to fix that. If we
21 can't fix that, it's going to blow up.

22 And the next thing I want to say is, we love the
23 USDA. The marketing services provided are great. You
24 haven't heard one objection to that.

25 And we have heard countless people saying,
26 "Well, what's this person paying? What's that person
27 paying?" You guys have that information. It's the
28 mailbox report. Sure, we might need to audit it. Sure,



1 we might need to do this and that. Farmers would love to
2 know what's the range of pay prices in my order. Let's
3 build it. Let's grow together. Let's help the
4 manufacturing sector grow.

5 That is -- you want to use the Class I market as a
6 revenue source to do that, but that's where we want to be.
7 We're -- 20 years from now we're going to be a global
8 exporter. You have never had a greater opportunity in
9 your life.

10 Europe's shooting themselves in the foot. Oceania
11 is out of land. China still can't feed itself. The next
12 marginal supplier is us. But we got to get with the
13 times.

14 And we're a bad supplier, because we are -- one
15 day the butter price is world low, let's export; now it's
16 world high, let's stop exports and import from New
17 Zealand. We're a bad supplier. Let's fix it and grow.

18 So, yeah, that's -- that's where we want to be.

19 MS. VULIN: Thank you very much.

20 Nothing further, Your Honor.

21 I would preliminarily move admission of
22 Exhibits 484, 485, and 486, with a minute-30 left.

23 THE COURT: Wow. That time went very quickly. It
24 was very dynamic. I need a break.

25 So if I take a break now, we come back, it's only
26 about ten minutes to lunch, but I think that's okay if I
27 do that.

28 So please come back ready to go at -- at 11:48.



1 Come back ready to go at 11:48.

2 We go off record.

3 (Whereupon, a break was taken.)

4 THE COURT: Let's go back on record.

5 Back on record at 11:48.

6 I invite cross-examination.

7 CROSS-EXAMINATION

8 BY MR. MILTNER:

9 Q. Good morning, Mr. Schuelke.

10 A. Good morning.

11 Q. My name is Ryan Miltner. I represent Select Milk
12 Producers.

13 I have some questions for you, and I'm looking at
14 Exhibit 485, which is MIG Exhibit 19A.

15 Do you have a copy of that in front of you?

16 A. Yeah. What page are you on?

17 Q. It will be page 9.

18 Now, you noted that your company has Class IV
19 processing. I believe you didn't state so, but I
20 understood that to mean you have no Class III operations.

21 A. We do not have Class III operations, but at times
22 I sell condensed milk to cheese plants, so I will have
23 Class III utilization.

24 Q. Okay. Does Crystal Creamery have a position on
25 any of the proposals in this hearing that change
26 Make Allowances?

27 A. We are a manufacturer of Class IV, and we're the
28 only one who is pooled. Our position is that those



1 current Make Allowances are unattainable by our own plant,
2 and based on the data that other farmers share with me, I
3 don't feel that others are able to successfully operate
4 their plants paying those prices for milk.

5 So we want a Make Allowance update, a reasonable
6 one, and quickly. And we feel it's even more important
7 for us because we're the only one out of the ten plants in
8 California, we're mandatorily pooled, so it really means
9 something for us, to where everyone else it's kind of a
10 joke.

11 Q. Okay. So I'm going to interpret that as, yes, you
12 support the proposals to increase Make Allowances?

13 A. Yes.

14 Q. And, of course, that would also lower your -- the
15 prices for your Class I purchasers, correct?

16 A. The lower Make Allowances?

17 Q. Yes.

18 A. Based on the formulas.

19 Q. Okay. So you agree with that, that lower
20 increases in the Make Allowance will in turn lower your
21 Class I regulated price?

22 A. Yes.

23 Q. Okay. Do you think that the data supporting the
24 proposed increases to Make Allowances is sufficient even
25 without a comprehensive survey of plant manufacturing
26 costs?

27 A. I would like a comprehensive survey, but I'll tell
28 you, you know, how this process works. I'll take what I



1 can get. And we -- I don't know why it is so hard to do.
2 In California it wasn't a mandatory survey, it was, if you
3 want to pool milk, you will participate. The same rule
4 could probably apply here, too.

5 Q. So I understand your answer to mean that you would
6 like a comprehensive survey, but it's not a requirement
7 for you to support the proposed increase to
8 Make Allowances?

9 A. Yes.

10 Q. So on page 9 of your statement, you state your
11 opposition to Proposals 10, 11, and 12, and you suggest
12 that there needs to be a comprehensive analysis of plant
13 yields before making those adjustments.

14 I'm curious as to why you're okay with changes to
15 Make Allowances without a comprehensive study, but these
16 changes you are -- you won't support without a
17 comprehensive study?

18 A. Because I'm at a functional economic disadvantage
19 right now. I can't use my plant assets on equal terms as
20 my competitors. So if we're going to do it, let's do it
21 right. But I need some immediate relief because I'm dying
22 here.

23 Q. And so it's simply an economic consideration for
24 you?

25 A. Yeah. I want to do it right, but I'll take what I
26 can get.

27 Q. When it -- when it's to your economic benefit?

28 A. Can your plants pay Class IV on all their milk?



1 Q. I don't have any plants.

2 A. Okay. Do you believe that they would?

3 Q. The nice thing about being over here is I get to
4 ask questions.

5 A. I'm just saying. I don't believe it's an
6 attainable standard to anyone, especially in California,
7 at current levels.

8 Q. Okay. Do you measure the farm-to-plant shrink
9 from your suppliers to your plant?

10 A. I buy everything off of my scale.

11 Q. Off of your scale?

12 A. Yeah.

13 Q. Okay.

14 A. Well, I'll buy -- we have a range, a formula.
15 I'll take your farm weight, but if it varies from my
16 scale, we go to scale.

17 Q. Do you measure any observed variances to know
18 that, you know, the farm weight and your plant weight
19 average a certain discrepancy or difference?

20 A. Yes.

21 Q. Are you willing to share that?

22 A. They normally average out to zero. And if they
23 don't, I say to calibrate your tank.

24 Q. Okay. So it's normally zero, the difference
25 between farm and plant weights for you?

26 A. Well, I'm also -- under that methodology, I'm
27 calibrating my farmers' tanks to my certified scale,
28 basically.



1 Q. Okay. Does your Class IV operation make any
2 buttermilk powder?

3 A. Yes.

4 Q. And do you -- do you sell your buttermilk powder
5 or do you utilize it in your operations?

6 A. We sell it.

7 Q. Do you also sell nonfat dry milk powder?

8 A. A lot.

9 Q. Do you track the correlations between those two
10 prices for buttermilk powder and nonfat dry milk powder?

11 A. No. Because I -- I -- I sell all my buttermilk
12 powder to one customer on a take-all agreement. So my --
13 I don't track what the public price is, all I track is
14 what my formula price is.

15 Q. Is your formula price pegged to the nonfat dry
16 milk price?

17 A. No.

18 Q. You make reference on page 9 of your statement to
19 the Midwest cheese plant in Michigan.

20 A. Uh-huh.

21 Q. And also the Southwest cheese plant in New Mexico.
22 Are you aware of the actual operations of those
23 plants?

24 A. I'm aware that they exist, and I Googled their
25 press releases on how much the plant cost in my analysis.

26 Q. Are you aware as to -- you described them as
27 similar plants.

28 Are you aware as to whether they correlate in



1 terms of size?

2 A. The original -- I -- I don't know enough about
3 them to talk.

4 Q. Okay. So you don't know if the plant in Michigan
5 is larger or smaller than the plant built in New Mexico
6 17 years prior?

7 A. I -- I can't comment on that. I just -- I'm
8 reporting what I read in the press release.

9 Q. Okay. Do you have any knowledge of the butterfat
10 recoveries of those two plants?

11 A. No.

12 Q. Do you have any knowledge of butterfat recoveries
13 for commodity cheddar plants in general?

14 A. Yes. I have worked for a few commodity cheddar
15 plants.

16 Q. When was the last time you worked for a commodity
17 cheddar plant?

18 A. Five years ago, more than that. Five to ten years
19 ago.

20 Q. Was that the Hilmar plant you reference in your
21 testimony?

22 A. Where is that?

23 Q. "My career in the private sector started with
24 Hilmar cheese where I was their dairy economist."

25 A. Uh-huh.

26 Q. Is that the cheese plant you are referring to?

27 A. I have worked there and Gallo Cheese would be the
28 two cheese manufacturers that I have worked for.



1 Q. Do you believe that a 90% butterfat retention is
2 still appropriate for a modern cheese plant?

3 A. I -- for a modern cheese plant? It -- when you
4 run so many different products and do so many different
5 things, and I also believe that the Class III price is way
6 too high to ever operate any of these plants. So all in,
7 I don't know. I -- I just -- do you think -- I guess
8 restate the question.

9 Q. Do you believe that 90% butterfat retention is
10 still appropriate for a modern cheese plant?

11 A. For a modern cheese plant?

12 Q. That's the second time I have asked it, yes.

13 A. Okay. A modern cheese plant that costs
14 \$100 million or a modern cheese plant that costs half a
15 million dollars?

16 Q. Let's go with the \$100 million plant.

17 A. I believe that might be attainable if you are
18 using old used junk equipment because you bought a used
19 plant for \$100 million. The press releases on what new
20 cheese plants cost are approaching a billion dollars now.

21 Q. Okay. So do you have an opinion as to what an
22 appropriate butterfat retention would be for a cheese
23 plant of that scale?

24 A. No. And I also believe in this setting, the --
25 what we're using is a political outcome.

26 Q. I'm sorry?

27 A. What we're using is a political outcome. It's not
28 a surveyed product analysis like what we did in



1 California.

2 Q. Okay. Thanks.

3 MR. MILTNER: I don't have any other questions.

4 THE COURT: Who else has cross-examination for
5 this witness?

6 I'm going to invite the Agricultural Marketing
7 Service to ask questions.

8 CROSS-EXAMINATION

9 BY MR. WILSON:

10 Q. Good morning. Todd Wilson, USDA.

11 Good to have you back, Jacob.

12 A. Thank you.

13 Q. Thanks for coming back. It's a little cooler this
14 week than it was I think the last time you were here.

15 Also -- also just express our sympathy on the loss
16 of your dairy farm, for closing that. We certainly don't
17 like to see that.

18 A. Yeah. And I also -- people always ask, "Why did
19 you close that farm?" I -- the story, it's not
20 comfortable to tell, and I don't think the owners
21 necessarily wanted me to tell it, but the room needed to
22 hear it.

23 Q. Understood.

24 Try to organize this so that we can get through
25 this before we break for lunch maybe.

26 On your Exhibit MIG-19, on page 4, it's also in
27 the PowerPoint presentation, but it's the chart. I would
28 like to know if you could maybe explain maybe the math



1 behind this.

2 A. Uh-huh.

3 Q. Give us some more insight to what -- what this is
4 we're looking at.

5 A. This is an analysis done by Phil Plourd, and it
6 was presented at the California Creamery Operators
7 Association meeting in Tahoe, California, and he was part
8 of a panel when he presented it. And what he did is used
9 his data and insights, primarily USDA data, and tried to
10 reconstruct what he felt was -- what the blend price has
11 been paying farmers over time in the system.

12 Q. Do you know what USDA data he was using?

13 A. I do not. I would assume some sort of generally
14 public available report, but I do not know. And I
15 would -- you know, this is going to, I feel it tracks some
16 sort of average PPD over time for the Upper Midwest order
17 as I --

18 Q. So --

19 A. Given location differentials for what a true
20 manufacturing --

21 Q. Maybe I missed that. Is this a graph of only the
22 Upper Midwest orders?

23 A. I took it to mean that, that it wasn't some sort
24 of national average. It was, if I live in some sort of
25 part of Northern Wisconsin, what's the pay price, is what
26 I took it to mean.

27 Q. Okay. Thank you.

28 On page 4, on the next -- the second paragraph,



1 you talk about assumptions on FMMOs not holding.

2 I was wondering if you might expand on that a
3 little bit.

4 A. The main assumption is of pooling, and I
5 referenced a pamphlet somewhere where the general idea is
6 that fluid plants always pay more than manufacturing
7 plants, and we pool and get the same price.

8 But in reality, that's not what happens,
9 especially when you have two now large manufacturing
10 classes and volatility. Those -- it just doesn't work
11 anymore. We have added new variables, and it doesn't work
12 the same like it did in 1970 when you had a government
13 price support cheese program that drove everything.

14 Q. So do you feel like it's the pay price that's the
15 assumed -- the assumption that the Federal Milk Orders are
16 not holding?

17 A. Yeah. I feel that if you are going to force
18 farmers into this system, you can't just say, "Well, you
19 got the blend." Because you have the mailbox data. The
20 blend isn't what everyone's getting paid in the order.
21 And my farmers are getting a lower pay price because of
22 it. I need -- I need a real competitive pay price if you
23 are going to force me into this system.

24 Q. On page 7, middle paragraph, you talk about --
25 this is on your support for MIG-20 base differential --
26 you describe that the base differentials don't move milk
27 in our system, there's only three ways to move milk:
28 Over-order premiums, location adjustments, and credits.



1 I was wanting to know if you could expand a little
2 on how credits are moving milk.

3 A. Well, the number one credit would be the Southeast
4 transportation credit. That moves a lot of milk.
5 Assembly credits would do the same thing. You could come
6 up with any sort of credit. We also have Class I
7 mandatory over-order premiums in some orders, I believe,
8 where we take money and then we pay it out in a dedicated
9 way. I don't care what you call it, I just -- I just want
10 to get something in my farmers' hands. We can call it a
11 credit, we can call it a whatever. I just -- I want to --
12 I want to put money in my farmer's hands. I don't want to
13 generate money and then pay 90% out to the people who are
14 already making more money than me.

15 Q. I understand that. There's been a lot of talk
16 about receiving credits, and I took that as meaning
17 something from that.

18 A. Yeah. Anything, call it a credit, call it a
19 direct payment, I don't know. Whatever -- whatever --

20 Q. Continuing with that same exhibit to page 9.

21 You talk about the Humboldt plant, Humboldt
22 facility. And does that facility -- it serves a
23 geographic area, you talked about that to some extent, and
24 how that area of milk has transitioned over 30 or 40 years
25 or whatever.

26 And I was -- we were wanting to know if -- does
27 that plant serve as a balancing function to that -- to
28 that area and how?



1 A. So it serves a balancing function to the entire
2 states of Oregon, California. And you heard it from other
3 people, any time they think they can get a truck there for
4 the freight. So sometimes we receive milk from Colorado.

5 And that's -- if you sell organic milk to --
6 Organic Valley testified that they don't own many bottling
7 plants. What they do is they buy tolling time. In order
8 to do that in a plant, what you need to do is stack 15
9 trucks end to end, unload them all at once, build up a big
10 slug of milk, start up your plant on the organic milk that
11 morning, and then you can switch over to conventional,
12 because you try to get the highest amount of milk.

13 So if I put -- if you tried to send one plant of
14 fluid milk to a bottling plant, you couldn't even get the
15 pipes wet before it hit the filler. You got to get a big
16 slug.

17 So what happens in organic is you might have 15
18 trucks a day of milk in one area, so one day you will send
19 all 15 trucks to the fluid plant, the next day you will
20 send them all here, you will send them here, there, and
21 the other. No one wants them on the weekend or whatever.
22 So whenever you need an extra, you have spare milk, you
23 can send it to me. And you might not like my tolling
24 rate, but you are really not going to like the
25 conventional price. So that's what happens.

26 Q. So I take it it's kind of hard to get milk to that
27 part of the state?

28 A. Yeah, it is. Yes. It is very hard. A lot of the



1 milk is 300 miles away, but if it's an organic farm
2 300 miles away, it's probably worth it to them to make the
3 trip.

4 Q. Switching gears to Exhibit 19A-MIG.

5 On page 6, this is discussing your opposition to
6 Proposals 1 and 2. I know you -- you referenced the state
7 of California, the Federal Order 51 components, I think,
8 in your direct exam.

9 A. Uh-huh.

10 Q. How does -- and you did explain that it was, you
11 know, lower most of the time. I was wondering if you
12 might know what those -- what those components are to our
13 current system and how those factors are for components in
14 our current system versus -- and if you want to express,
15 you know, are they higher or lower, if you know the number
16 or whatever?

17 A. Our components, I guess I could share, they are
18 almost always lower than the California pool average. As
19 I lose my direct ship farmers and I procure more and more
20 from cheese plants and other areas, they are rising, just
21 because that's the only place where I can get milk. So I
22 would say the -- my milk supply is now reflective of the
23 order, not my direct ship. So it's -- it is changing with
24 that.

25 Q. Okay. All right. Thank you. Okay.

26 Over on your PowerPoint presentation, page 6, you
27 discussed -- this is going back to the opposing
28 Proposal 19. One of the bullets you talked about how the



1 USDSS does not consider organic milk, specifically
2 Humboldt.

3 In what ways can you -- can you explain how it
4 doesn't consider it?

5 A. Because it considers -- the change in the two
6 models, where before Humboldt, California, had a same
7 location differential as Marin, Sonoma, the other coastal
8 counties. And then under the new model it had more of a
9 tiered structure, which is what you see in milk sheds,
10 where at the center of the milk it's now lower and
11 surrounding it's higher, which means the model is saying,
12 you got too much milk here, let's export. And there's no
13 conventional milk to export there. All the milk sold
14 there is bottled in Modesto and imported. As other people
15 called it, it's a conventional milk desert. It's --
16 there's no conventional milk there, but the model thinks
17 there is.

18 Q. So when you mention that it doesn't consider it,
19 the Humboldt plant, let's say, you are not saying that the
20 model doesn't have Humboldt in the model --

21 A. Oh, it has Humboldt in the model --

22 Q. Okay.

23 A. -- but it thinks the milk's conventional when it's
24 not.

25 Q. And the production area of that area is also in
26 the model, just not representation to the -- to what you
27 know as real world experiences that it's organic?

28 A. Yes.



1 Q. Thank you. I think that's all of my questions on
2 the exhibits. There's a few that we been kind of asking
3 several people as they testify.

4 Do any of your products -- are any of those ESL
5 products --

6 A. No.

7 Q. -- in either one of your plants?

8 And I think you already answered that one as well.

9 MR. WILSON: I think that's all the USDA wants to
10 ask at this time. Thank you very much, Mr. Schuelke.
11 Appreciate your time here.

12 THE WITNESS: Thank you.

13 THE COURT: Are there any other questions before
14 we have redirect?

15 There are none. Ms. Vulin, you may return.

16 MS. VULIN: Your Honor, no redirect, just moving
17 admission of Exhibits 484, 485, and 486, please.

18 THE COURT: Is there any objection to the
19 admission into evidence of Exhibit 484, also
20 MIG/Crystal-19?

21 There are none. Exhibit 484 is admitted into
22 evidence.

23 (Thereafter, Exhibit Number 484 was received
24 into evidence.)

25 THE COURT: Is there any objection to the
26 admission into evidence of Exhibit 485, also
27 MIG/Crystal-19A?

28 There are none. Exhibit 485 is admitted into



1 evidence.

2 (Thereafter, Exhibit Number 485 was received
3 into evidence.)

4 THE COURT: Is there any objection to the
5 admission into evidence of Exhibit 486, also
6 MIG/Crystal-19B, like boy?

7 There are none. Exhibit 486 is admitted into
8 evidence.

9 (Thereafter, Exhibit Number 486 was received
10 into evidence.)

11 MS. VULIN: Thank you, Your Honor. Nothing
12 further for this witness.

13 THE COURT: Mr. Schuelke, it's been a delight to
14 hear you. Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: And I think it's appropriate for us to
17 break for lunch. It's 12:15. Please be ready to go at
18 1:15.

19 (Whereupon, the luncheon recess was taken.)

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1 FRIDAY, JANUARY 19, 2024 - - AFTERNOON SESSION

2 THE COURT: Let's go back on record.

3 We're back on record at 3:17 [sic].

4 Mr. English?

5 MR. ENGLISH: Good afternoon, Your Honor. Chip
6 English for the Milk Innovation Group.

7 THE COURT: I'm sorry, 1:17. I said 3:17 because
8 I was looking at military time, 1317.

9 1:17.

10 Mr. English.

11 MR. ENGLISH: Thank you, Your Honor.

12 On behalf of the Milk Innovation Group, we recall
13 to the stand Mr. Tim Doelman for fa!rlife.

14 And while he's coming to the stand, we have
15 distributed previously submitted testimony,
16 Exhibit MIG/fa!rlife-26 and Exhibit MIG/fa!rlife-26A.

17 And I believe Exhibit MIG/fa!rlife-26 should be
18 marked 487.

19 THE COURT: Yes.

20 (Thereafter, Exhibit Number 487 was marked
21 for identification.)

22 MR. ENGLISH: And Exhibit MIG/fa!rlife-26A should
23 be marked as 488.

24 THE COURT: Yes.

25 (Thereafter, Exhibit Number 488 was marked
26 for identification.)

27 THE COURT: Mr. Doelman, when you are satisfied
28 with your comfort level with your microphone, please state



1 and spell your first and last name.

2 THE WITNESS: Tim Doelman, T-I-M, D-O-E-L-M-A-N.

3 THE COURT: Thank you.

4 You have previously testified in this proceeding,
5 correct?

6 THE WITNESS: Yes.

7 THE COURT: You remain sworn.

8 THE WITNESS: Thank you.

9 TIM DOELMAN,

10 Having been previously sworn, was examined
11 and testified as follows:

12 MR. ENGLISH: And for the benefit of the court
13 reporter, "fa!rlife" is not capitalized. Lower case "f"
14 a!rlife, so there is no capitalization in fa!rlife.

15 (Court Reporter response.)

16 THE COURT: You know, that's what I hate about
17 everything in all caps, how is a person to know? You may
18 proceed.

19 MR. ENGLISH: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. ENGLISH:

22 Q. So, Mr. Doelman, you have appeared before, but
23 it's been several months, and so a few quick reminder
24 questions before we get into your testimony.

25 What is your position with fa!rlife?

26 A. CEO.

27 THE COURT: Is that CEO?

28 THE WITNESS: Chief executive officer.



1 THE COURT: Thank you.

2 BY MR. ENGLISH:

3 Q. Tell us again about how you started fa!rlife.

4 A. So a good group of us about 25 years ago that
5 started down a journey believing that we could innovate
6 new products. So we actually, it was myself, a partner,
7 Select Milk, a few others, invested into a group that at
8 the time was called Innovative Dairy Products. And the
9 idea was we were going to innovate in the dairy industry
10 to help grow it and realize the value in the milk, so that
11 set off a journey.

12 Ryan Miltner, one of our counselors along the way,
13 just gave me a stamp from 2000 that says "The Good Cow
14 Company." We quickly realized Innovative Dairy Products
15 was not a very sexy name, and we changed it to The Good
16 Cow Company.

17 And so then we began marketing our product,
18 working through much innovation to really create value in
19 the space. We toiled for ten years as The Good Cow
20 Company to bring these innovative products to the
21 marketplace. Ultimately, we were able to get some
22 products launched, one of which is today our Core Power
23 product, and it was very successful. Along that journey
24 we created a JV with the Coca-Cola Company, and then grew
25 a business together to what is fa!rlife today.

26 So in 2020 Coca-Cola took over control of the
27 business, and today runs it, or essentially owns the
28 business as we continue to operate and -- continue to try



1 to innovate great dairy products.

2 So a little bit of a journey, but a 25-year
3 process.

4 Q. So tell me a little about the types of those
5 innovative products that fa!rlife manufactures.

6 A. So we have actually tried a lot of different
7 things over the years. But the products that most people
8 are aware of today are our ultrafiltered milk, which is
9 kind of the namesake fa!rlife milk out there. It's, you
10 know, brought a lot of innovation into this Class I space,
11 a lot of innovative aspects about the product. And it's
12 been very successful in the marketplace, and well
13 received, and sold all over the United States, in all 50
14 states, and even though other places.

15 I was on vacation a year ago or so in one of the
16 Bahama Islands, and they had fa!rlife milk. I didn't
17 realize we were selling milk there. So it finds its way
18 all around the world. And so it's really a neat thing to
19 see after many years of trying to create innovation in the
20 space.

21 So the other product I mentioned was Core Power,
22 kind of another more nutritional drink type of space. We
23 go after kind of the recovery occasion. We continue to
24 try to grow that category so it's not just sports-focused,
25 you know, diehards that are just, you know, lifting
26 weights, but also moms on the run and a lot more uses.
27 And we have done a great job broadening that category, and
28 that product has had incredible success, too, over the



1 last ten years.

2 And we have a third product that's -- people may
3 know it as a fa!rlife shake. It -- it's actually called
4 fa!rlife Nutrition Plan, and it's sold through a couple
5 different channels, mostly club, and is also highly
6 successful also.

7 So all of these products, what they have in
8 common, starts with great milk. We have a really neat
9 proprietary filtration process, fantastic packaging
10 equipment, and we deliver and innovate around the
11 formulation side so the consumer ultimately gets a great
12 experience with these products.

13 So there's a common thread between them all. They
14 are higher in protein. We manufacture them where they are
15 all lactose-free, and we make them very convenient for the
16 consumer.

17 Q. Thank you.

18 How many employees does fa!rlife have?

19 A. We have grown to just -- just about 850 employees
20 now.

21 Q. Where are fa!rlife's manufacturing facilities
22 located?

23 A. Our first plant we'll say is Dexter, New Mexico,
24 where we did a lot of the filtration work to understand
25 how to do it. We have a plant in Coopersville, Michigan.
26 We have a plant in Goodyear, Arizona. And we're building
27 another facility in Rochester, New York, just outside of
28 Rochester -- Webster specifically.



1 Q. Can you give us a breakdown of which plants
2 manufacture only Class I products, or what other products
3 are manufactured at each site?

4 A. All plants manufacture all Class I products, as
5 well as Class II and some Class IV.

6 Q. What kind of milk supply does fa!rlife have as
7 between independent and cooperative supply?

8 A. Yeah. From a philosophy perspective, again,
9 our -- from the outset, one of the founding groups is
10 Select Milk Producers, so we're very much on the
11 cooperative supportive side of things, and we continue to
12 source all our milk through cooperatives.

13 Q. Please characterize your milk supply in terms of
14 how far it is from your plants.

15 A. You know, each location, slightly different. But
16 in all of them, within a hundred-mile radius typically is
17 what we try to achieve. Sometimes milk may come from a
18 little further than that, but in general, each site tries
19 to bring milk in from a hundred miles. It's very -- as
20 you can imagine, freight's very expensive, so it makes
21 sense to put your plant where the milk is, and that's the
22 strategy we have taken from the very beginning.

23 Q. Does fa!rlife pay its suppliers over-order
24 premiums?

25 A. Yes, we do.

26 Q. In these negotiations, did fa!rlife suppliers
27 explain what drives their need for the over-order
28 premiums?



1 A. Yeah, there's -- there's general costs associated
2 with the business to run. There's certain product
3 attributes that we're going to want. There are certain
4 services that we'll want as far as when and how much kind
5 of flexibility you will have around scheduling, things of
6 that nature. And then, of course, there's competitive
7 pressures. All of those things result in over-order
8 premiums that exist in the marketplace.

9 Q. Why did fa!rlife join the Milk Innovation Group?

10 A. When we knew there was some change coming in
11 regards to the -- or potential change, I should say, in
12 regards to the Federal Milk Marketing Order, you know,
13 obviously we were curious as to what the change would be.
14 And what we had heard through the grapevine was that there
15 were a lot of potential cost increases associated with it,
16 or changes to the differentials, maybe changes with the
17 general classification programs, things of that nature.
18 So we had interest to pay attention to what might be
19 driving our future costs.

20 Q. Was fai!rlife a founding member of Milk Innovation
21 Group?

22 A. We joined early, so I'm not 100% sure who was
23 first, but I would say yes.

24 Q. Does fa!rlife support MIG's proposals?

25 A. Yes.

26 Q. Why?

27 A. At the end of the day, fa!rlife is supportive of
28 an FMMO system and having an appropriate way to make sure



1 we can all market the milk correctly. At the same time,
2 we want to make sure that we continue to modernize what we
3 have.

4 The current system is built really off of a system
5 from over a hundred years ago, or near a hundred years,
6 and I think it limits some opportunities for the industry.
7 So we have interests collectively with MIG, as well as
8 with the entire industry, to be able to move this process
9 forward.

10 Q. I know that we have had all -- you're now the
11 final MIG member -- testify on Proposals 19 and 20.

12 Are you aware of their testimony?

13 A. I'm aware -- I listened to some of it. I know
14 some of what was going into it. I didn't listen to all of
15 it.

16 Q. But rather than duplicate the points that they
17 have made, I understand that you are going to summarize --
18 well, 488, which is 26A -- as opposed to reading those
19 statements into the record, correct?

20 A. Correct.

21 Q. So would you now give us your summary rather than
22 reading 488.

23 A. Rather than read, which would put you all to
24 sleep, because I think I put my kids to sleep when I used
25 to read, so I will go through kind of a chronological
26 thought process here, so be patient as I go through it.
27 And then very welcome to questions afterwards, of course.
28 Not that I have a choice in that matter, but thank you.



1 First and foremost, around the differentials in
2 general, and -- and the basis of the differentials, and
3 what the Federal Milk Marketing Order does using
4 manufacturing class as a basis to discover price, I think
5 personally it makes a lot of sense that the manufacturing
6 side of it helps establish a price. I don't know that's
7 the only way it can be done. Obviously there's other ways
8 done around the world, but I think it is a reasonable
9 approach to take and certainly can support it.

10 Those Make Allowances are up in the air right now
11 are being discussed. Obviously costs have increased. I
12 would just make sure everyone understands those same cost
13 pressures also have increased for us. Our manufacturing
14 of a Class I product and a Class II product has also gone
15 up. So it's just -- just -- I understand the potential
16 need for a change here, at the same time realize Class I
17 and Class II are also under those same kind of cost
18 pressures.

19 From my perspective relative to differentials, I
20 believe it would be best to not interfere with them or
21 make significant changes on the upside of things, because
22 I believe the marketplace will adjust, and has adjusted,
23 for what the purpose of those differentials were. I -- I
24 believe a -- a free marketplace will determine the
25 appropriate value for things, as opposed to some kind of
26 an interpretation of formulas that will get outdated, that
27 will miss facts. There are many factors associated with
28 it. But good negotiations between partners and



1 competitive players will ultimately get the pricing right,
2 and at the end, the consumer will benefit the most.

3 I think, you know, if we already have a program, I
4 very much support it be a minimum price program as opposed
5 to the actual price.

6 We have not had an issue at our facilities
7 sourcing milk for Class I, nor Class II. There is an
8 ample supply of milk in the marketplace. When we look at
9 where to put a plant, we look at a variety of factors, and
10 really three main drivers ultimately, and that is: What's
11 the price of the milk and how available it is? How big is
12 my plant going to be? What size? What kind of scale?
13 How many cases can I get through it? Because ultimately I
14 have to divide cost structure, so that size of the plant
15 really matters. And the distance to the market ultimately
16 in the finished product matters.

17 So as we consider, do we need five plants to
18 execute our business plan, or two -- two plants, or ten
19 plants, those three factors ultimately dictate what kind
20 of decision we'll make.

21 For us, having another potential cost structure
22 change along the way while we're making these decisions,
23 such as these differentials that we're talking about, is
24 very undermining to a formula that would drive,
25 ultimately, to the least cost structure.

26 So, again, we look at that milk availability and
27 the price associated with it, the size of the facility
28 that we're going to build, as well as the distance.



1 Ultimately, if we get it wrong or things change on that or
2 cause us to be less efficient, the consumer will be the
3 one who ultimately gets less because we'll end up having a
4 higher price associated with things.

5 So the market is better when we allow ourselves to
6 make those decisions around how big, what location, what
7 price we're going to pay, we negotiate that with our
8 competitors, and ultimately we'll make the best decision
9 for us and the consumer.

10 How do we accomplish that with the current system?
11 We pay over-order premiums. Our over-order premiums help
12 dictate what special attributes we need in our milk.
13 They -- we deal with situations around fuel that just came
14 up, you know, an over-order -- or a class differential
15 program certainly in Class I that looks at freight rates
16 and all this, so you don't have arbitrage situations and
17 all the other things that go with it, gets outdated so
18 quickly. We can deal in realtime with the marketplace
19 because we deal in this over-order premium structure.

20 We deal with -- even receiving is costly to have a
21 plant go up and down. We recognize that. We're a buyer.
22 We can cause plants to go up and down. We deal with it
23 through our negotiations with our suppliers around this
24 over-order premium. So there's a methodology that's out
25 there to be able to determine what's right around the
26 pricing. If we get it wrong, we won't have a milk supply,
27 so we understand that. But what we don't necessarily need
28 is someone else to tell us how much it costs to do even



1 receiving and everything else from a government
2 perspective. So hence the reason why we have so much
3 opposition towards a mandated kind of price structure
4 associated with this, or a change to what we have.

5 And then the last thing I'll just say on that part
6 is, when we deal with over-order premiums and things of
7 that nature, we can actually ask for very specific
8 characteristics to the milk we want, and I think that
9 creates a lot of freedom.

10 So I guess my perspective on this, to sum up and
11 say, the marketplace works. We can go to a customer to
12 ask for certain attributes. Whether or not it's specific
13 to the milk or a service or some other characteristic
14 about the relationship, we can negotiate that. And I
15 think that is the best thing ultimately for the consumer
16 and for the industry to develop the right price scheme for
17 that, or price structure.

18 Going on. In regards to these class
19 differentials. If the class differentials increase, it's
20 significant in relationship to our current contracts that
21 we have. We have contracts that last two years,
22 five years. Sometimes it's one year on the short side,
23 but many times it's longer. So any change would
24 significantly alter what has been negotiated between the
25 parties, us and our vendors, suppliers, so I think that
26 needs to be certainly considered.

27 In regards to, again, increasing class
28 differentials, as if that's going to move milk to one



1 place or another, more and more so, as you all know,
2 Class I represents much less of the overall milk
3 production in the United States. Since 1975 we have gone
4 from 50% of Class I to less than 18%. That is a dramatic
5 drop. And I would say over the next ten years it will
6 continue and potentially accelerate, which makes the pool
7 of dollars you are trying to raise for the -- for our
8 program very -- well, less consequential. And two, the
9 rate of change in decrease makes it very difficult to kind
10 of get the formula right. So from my perspective, we're
11 better off, again, letting the marketplace work.

12 When we talk about the over-order premiums, what I
13 like best about them, it goes directly to the people we're
14 interacting with or dealing with, our supplier. It
15 doesn't necessarily go to a group that really has no
16 accountability for the service or the product attributes
17 that we're looking for, and I think that ultimately
18 essentially just creates a cost without a benefit. So I
19 think that's an added cost that doesn't really help the
20 industry figure out a way forward, with better products,
21 innovative products, and innovative services.

22 The other element that I'll mention, too, around
23 kind of -- I mentioned the three, how much milk supply,
24 what's the cost of it, how big are these plants do we
25 build, how far are these plants away from the location
26 that we're trying to serve. Making changes to the current
27 structure that you have from a cost increase side of it
28 certainly will create winners and losers.



1 I -- we'd like to build a very large facility in
2 Rochester, New York. It's a huge investment. Lots of
3 dollars to process lots of milk. Having the basis of your
4 price structure now shift underneath you is very
5 significant. It would cause to us reconsider the scale of
6 the plant we build. Should we shrink it? Should we move,
7 make a less-efficient plant somewhere else because the
8 formula is telling us that you have to pay more for your
9 milk now here?

10 Which, to me, doesn't even make sense because we
11 deliberately go out -- and by the way, the formulas I have
12 seen proposed do tell us we need to pay significantly
13 more -- when we have made a point to conscientiously put
14 these plants where there's excess milk, or has the
15 opportunity to be excess milk. We are not building these
16 plants in the middle of New York City, we are putting them
17 where it makes sense to grow.

18 So we should not be undermining this effort to
19 grow and innovate in the dairy industry. It makes it very
20 difficult for someone to lean into the industry and invest
21 as much as we have over the last, call it ten years, in
22 our facilities. So I think that's something to very much
23 consider. If we want to grow our facilities, if we want
24 to grow our infrastructure as an industry, to continue to
25 move forward and progress.

26 And I really -- again, if you look and you try to
27 find outside capital, money that's not coming from a
28 cooperative, or from the farmers themselves, we need to



1 make sure we have a secure milk source and a pricing
2 system that's very clear and understandable and the ground
3 isn't shifting.

4 If a change were to be made with Class I and
5 Class II, I would advocate that the change essentially
6 take the funds that are there and put those directly
7 towards people servicing these accounts.

8 Again, I mentioned earlier, I think when it goes
9 into a pool, all the extra services we're asking for,
10 everyone -- not everyone's participating in that cost
11 structure, but everyone's participating in the extra money
12 there. And I don't think that's necessarily a smart way
13 to move forward, to be able to nurture the right
14 relationships, ultimately be the most competitive in the
15 marketplace for all parties involved, and ultimately grow
16 the industry.

17 Specific to Class II and Proposal 21, and Jacob
18 did a fantastic job I think explaining this earlier, which
19 is, if you start increasing Class II, absolutely people
20 will look more to just use Class IV, and that's a huge
21 negative for the industry. We are a very large Class II
22 user and pride ourselves in being able to create the
23 space. Our products last over a year, in many ways have
24 the exact same attribute as a powder product.

25 Why don't we classify ourselves as Class IV? It's
26 a good question. There's a lot of potential dialogue
27 around that space. We're okay with where it's at, but an
28 increase in it, you are going to force us to look at using



1 Class IV. And even more so, my competitors are mostly in
2 Class IV today. You are going to keep people from even
3 considering looking at Class II if you start to change
4 this also. Because it takes a lot of money and
5 infrastructure to build these facilities, to then add an
6 additional cost to it where you're going to be
7 competitively disadvantaged to those that go the route of
8 using powder products.

9 I have an example over the last ten years, I won't
10 share the exact brands, but I was involved with a project
11 that sells a beverage -- call it a dairy beverage, as much
12 regulation in this industry, so I think it is officially
13 called a dairy beverage. When it was first formulated, it
14 was formulated by a group that maybe didn't know the dairy
15 industry super well, so of course they used about 90% milk
16 in it. And there was some other products with it, from a
17 flavor side of it. And it was a fantastic tasting
18 product.

19 So as we went through the cost -- and actually
20 went to market with it and had really good success.

21 But as they got to understand the cost structure
22 better, they realized, wow, if I can get this down to
23 where I'm only around 48%, 47% milk in this, I can be
24 Class IV. And so that's precisely what the group did.
25 They spent the next six months figuring out how to take
26 milk out of the product.

27 And the competing products in its place do the
28 exact same thing. They make sure they don't put any more



1 milk in, not that it makes a better product, in fact, it
2 makes a less superior product, but it is exactly what they
3 did.

4 So this is the downside with -- with playing
5 around with the price in Class II. You are going to --
6 you are going to continue to push products into the IV
7 space.

8 So in conclusion, from my perspective, first off,
9 hats off to all of you for being here for the last six
10 months. Nothing but respect for this industry and all
11 those involved. And I mean that. I know many of you, and
12 I'm proud to be a part of it. And I'm glad in the role
13 that I have been able to play. I have no desire to have
14 this industry go backwards. My whole life's work is to be
15 able to move this industry forward.

16 And I look at the tools that USDA kind of creates
17 for the industry, the survey, you know, order, a back -- a
18 backstop in price. I think those are all very good
19 things, and we need to be very thoughtful with them as,
20 you know, moving forward.

21 I also know that Class I certainly, and Class II,
22 has been flat, not necessarily growing. Cheese and powder
23 will continue to grow and be a much more dominant portion
24 of the industry, it just will be. We're going to be a big
25 exporter, as Jacob mentioned, the opportunity is here, as
26 long as we do it right and set it up to succeed correctly.

27 So the Class I will continue to be a smaller piece
28 of the puzzle. We would like to continue to innovate in



1 this area, as well as Class II, to create more demand for
2 these products. And we're going to have to continue to
3 negotiate with the suppliers of that and the competing
4 uses for milk, successfully. And I think we can do that
5 through the marketplace with our over-order premiums and
6 negotiations with the competitive set that's there.

7 Ultimately, when we do that, we're able to help
8 drive the right attributes for the product, the raw milk
9 source that we want, the services that we need, and
10 ultimately, that's better for us, and it's better for our
11 supplier, and we want to pay them directly for it.

12 So from my perspective, I would love the industry
13 to consider a step towards modernizing this industry at --
14 and at minimum, don't go the other direction to where
15 it -- it potentially puts more controls and limitations on
16 the industry.

17 I was sharing earlier a story about fa!rlife and
18 kind of what it took to get going, and it's -- there's
19 really two elements of regulations in this industry.
20 There's the foodservice -- or excuse me -- the food safety
21 aspect of regulation, and there's this pricing aspect of
22 regulation.

23 And, again, not against regulation, they have a
24 purpose and a place. Sometimes that purpose changes over
25 time and we need to adapt it.

26 When we started with fa!rlife, we had so much
27 difficulty figuring out how to be able to sell this
28 product, get through the laws, and the rules, and the



1 regulations. We ultimately fought to get through it, and
2 it took many years. But now we can sell our products
3 freely, and I think it's been a very big success for the
4 consumer, a big success for the dairy industry, and I
5 strongly believe we're just starting.

6 I think the same mentality exists for pricing
7 regulations. I believe we have a complicated system.
8 There's reasons why it existed, and I think we need to
9 look at it in earnest to figure out how we can simplify it
10 and enable more innovation in the space. I think as a
11 result, the entire industry will be better off.

12 Thank you.

13 Q. Thank you, Mr. Doelman.

14 I just -- I think as a follow-up to that, and you
15 may have already effectively answered this, but just in
16 case, what is your position on Federal Milk Marketing
17 Orders?

18 A. I support them. I would like with that -- I
19 support them if we can update them. I do not support a
20 price increase on these differentials.

21 MR. ENGLISH: Your Honor, at this time the witness
22 will be available for examination after I move, subject to
23 ruling after examination, for the admission of
24 Exhibits 487 and 488.

25 And the witness is, I think, available for further
26 examination.

27 THE COURT: Thank you, Mr. English.

28 Who would like to begin cross-examination.



1 CROSS-EXAMINATION

2 BY MS. HANCOCK:

3 Q. Good afternoon, Mr. Doelman. I'm Nicole Hancock
4 with National Milk.5 You understand that the Federal Order system was
6 implemented because natural market forces didn't allow for
7 the proper movement of milk in a fair and equitable
8 manner?9 A. I -- I don't know how long ago that was, so I
10 don't know necessarily that -- how many years ago was
11 that. I don't know the answer. I think it was, but I
12 believe if I recall, it was close to 80 years ago, maybe a
13 little longer than that.14 Q. I take from your answer that you believe that
15 that's no longer a factor for concern?16 A. That is correct. I believe the marketplace will
17 allow milk to flow appropriately from one place to the
18 next, equitably and competitively.19 Q. And it's fair to say that all of your experience
20 in the industry has been under a time when there was a
21 Federal Order that governed that movement of milk?22 A. I would agree. I think one reason we're here is
23 because we're talking about updating it because we think
24 there are some elements that are outdated. So the
25 industry has evolved to be able to address what the
26 Federal Order was becoming outdated against.27 So from that perspective, the same way it adapted
28 to make sure we could get milk in the right place today, I

1 think would exist without an increase or change in that
2 significance of the Federal Milk Order.

3 I do believe there's a value in how you -- an
4 underlying value in how the manufacturing grade
5 manufactured products -- cheese, butter, powder -- is
6 established. I think there's alternative ways. But I do
7 see value in what's there today.

8 Q. And you talked about over-order premiums that
9 fairlife pays to its suppliers.

10 Are you comfortable sharing what the range or
11 averages are that you pay on over-order premiums for the
12 acquisition of your milk?

13 A. No, I won't share that.

14 Q. Okay. Not even in a general or aggregate way?

15 A. No.

16 Q. Okay. Can you share if you pay them to all of
17 your suppliers?

18 A. Yes, we do.

19 Q. Okay. And in your testimony you talk about some
20 of the value-add items that you believe that you're paying
21 for in those over-order premiums; is that fair?

22 A. That's fair, yes.

23 Q. And can you summarize what -- what those
24 attributes are that -- that you are paying for with those
25 over-order premiums?

26 A. I'll group them up more in kind of a bigger
27 grouping as opposed to every detail. But there's a
28 variety of quality-related attributes. There's a variety



1 of composition attributes associated with that. So you
2 have kind of a food safety quality element of it. You
3 have an attribute element of it. You have service -- a
4 service side of it.

5 Again, we talked about how consistent you can be
6 as an operator to make sure you have a constant supply of
7 milk come in, realizing and recognizing that cows produce
8 about the same amount of milk every day, with the
9 exceptions of course of your different seasons where you
10 have some highs and lows, to understand that effectively.
11 There's a service around if we were to take the plant down
12 for any significant amount of time, so there's some
13 elements around that also that we address.

14 Those are probably the good four -- four groupings
15 for you to get a sense of the different characteristics
16 that we're looking for.

17 Q. Is plant downtime of the fourth category?

18 A. Yes.

19 Q. Okay. And so that would be balancing?

20 A. It's an element of balancing.

21 Q. There's other ways in which you balance as well?

22 A. There's other elements balancing, too, yes. In
23 regards to your consistency of supply, changing of orders,
24 all that -- all that matters.

25 Q. And then within each one of those kind of four
26 buckets are lots of smaller nuances that kind of fall
27 under that; is that fair?

28 A. That is absolutely correct.



1 Q. So, for example, under quality, what kind of
2 quality elements do you include?

3 A. Again, I'm -- I won't go through all the details
4 because it's, you know, part of our relationship we have
5 and what specific things we ask for. But think
6 bacteriologically, for instance, that might be an aspect
7 of it.

8 Q. Limits on the amount of bacteria that can be
9 present in the milk?

10 A. Yeah.

11 THE COURT: That answer was "yes"?

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 BY MS. HANCOCK:

15 Q. In your testimony, you -- I wrote down in my notes
16 you said you want to pay your suppliers directly rather
17 than have the base differential of \$1.60 included in
18 Class I differentials because you want to pay the supplier
19 who is responsible for delivering you the attributes that
20 you want.

21 A. And the service. Yeah. So, yeah, the total
22 including service. The balancing, all the other work that
23 goes with it, yes, that's correct.

24 Q. Okay. And -- and so are there -- are there
25 attributes to your Class I fluid milk that are unique to
26 what your requirements are from your suppliers that you
27 want to pay those suppliers directly for?

28 A. Yeah. For sure. I think every processor has a



1 different way of running their business, and so you can't
2 group them all the same. The fluid milk plants, just like
3 the next fluid milk plant, there's different services they
4 may need. Frequency of -- of -- of receiving. Different
5 times of day you receive. Are you consistent every day of
6 the year? How fast do you receive? Do you wash?
7 There's -- there's so many attributes that you can kind of
8 go into to distinguish how the business actually runs.
9 They are just not all the same.

10 So I think we run our business one way, and, you
11 know, Jacob and his group might run it slightly
12 differently, and there's all kinds of differences in the
13 marketplace that way. And that's something that, I
14 believe, you want to determine what's the value for people
15 in regards to that. So -- and you do that with your
16 supplier, you don't do it with a pool.

17 Q. And you are willing to -- to pay for those
18 attributes for the extra services and attributes that you
19 want for your Class I fluid milk over that which you want
20 for your manufacturing products?

21 A. Well, yes, ultimately. I don't even want to
22 distinguish the difference in Class I or Class II at this
23 point, but I would just say for -- put them both together
24 and say, yes, we -- we pay for extra attributes associated
25 with that.

26 There's really not a big distinction between the
27 attributes we ask for between a Class I and a Class II.
28 There really is no distinction. Which to me is another



1 reason why, why is there a distinction? I can still get
2 the milk, and it's the same.

3 But we do ultimately want to be able to pay that
4 group of suppliers to us a price that works for them in
5 totality.

6 Q. And you said that when we deal -- when we have the
7 ability to use our over-order premiums, we can ask for
8 those certain attributes from those specific suppliers?

9 A. Correct.

10 Q. Does that -- and you have cooperatives with whom
11 you contract for milk?

12 A. Uh-huh. Correct.

13 Q. And so are you able to do that with your
14 cooperative suppliers as well?

15 A. Correct. Yes.

16 Q. And -- and in your contracts, you direct those
17 cooperatives as to what attributes that you want that are
18 unique to service whatever business model you have that
19 you are trying to service the Class I fluid milk market;
20 is that correct?

21 A. I wouldn't use "direct" because -- I'd love to be
22 able to direct them -- but we negotiate what that is worth
23 to us, and then we ask for it, certainly.

24 Q. And to the extent that you get that in your
25 contract, that's a directive that you can enforce upon
26 them?

27 A. They don't have to accept a contract with us. So
28 it is an ask. It is a negotiation back and forth. We



1 don't direct anything. I wish it were that simple.

2 Q. Right. And so when I said to the extent that you
3 are able to negotiate that into the contract, that
4 presumes that there's an agreement on the other side, and
5 once the agreement is in place, that becomes the directive
6 against which you can hold them accountable?

7 A. Yes, of course. We have to pay them a certain
8 price, and they have to deliver a certain element of what
9 we asked for.

10 Q. And does fa!rlife require, in its contracts from
11 its suppliers, that the farms that supply it are of a
12 certain size?

13 A. It's not so much always about the size as much as
14 we need a certain volume of milk. So we do have an
15 element associated with that.

16 Q. Okay. And that might require that each farm that
17 supplies fa!rlife has to supply at least one load per day?

18 A. Yeah. We ask for one tanker a day to make sure we
19 have got a fresh supply of milk coming in from the farm.
20 We don't -- we do not want, because we're looking for
21 certain quality attributes, the milk to sit on the farm
22 more than 24 hours.

23 Q. And have you been able to negotiate that in all of
24 your supplier contracts?

25 A. Yes.

26 Q. And so to the extent that you have been able to
27 negotiate that in the contracts, it's fair to say that
28 that becomes a directive against which you can hold your



1 suppliers accountable?

2 A. I -- I don't know why you want to call it a
3 directive, per se, because it's -- it's agreed to. So we
4 have agreed that that is what they will supply us, and we
5 will pay them for that.

6 Q. Okay. It becomes a contract term?

7 A. Yes. Yep.

8 Q. A better word, maybe?

9 A. Yeah. I'm not a lawyer, so I don't -- I don't
10 know why you want to use that term but --

11 Q. There's no trick, I can assure you.

12 A. Okay. All right. Very good.

13 Q. And so one load a day or a tanker a day on a farm,
14 do you know how many cows it takes to fill up one tanker?

15 A. If you got really good cows, about 500 milking
16 cows. If you are not quite as good, maybe 600, maybe 700.
17 It depends. It's in that range.

18 Q. So it's fair to say that you don't source any of
19 your milk from what would qualify as a small business in
20 the Federal Order system?

21 A. I do not know the breakdown on where that is.

22 Q. Okay. If I were to tell you that it's probably
23 400 cows, would you agree with me?

24 A. I would agree then, yes.

25 Q. Okay. Do any of your contracts have a mid-max
26 term in them?

27 A. Just that, in regard -- you -- that is a very
28 open-ended question, so I really don't know how to answer



1 that, quite honestly, as I started thinking through that.
2 So could you clarify what you mean by that?

3 Q. Do you allow for a range of volume deliveries
4 where you have set a minimum and a maximum amount?

5 A. The minimum is that you have a farm turn over
6 their milk every 24 hours, so that would be the
7 requirement. But that's it. After that, if you are
8 talking about in relationship to the size of a farm or --
9 and I think that's what you are -- what I'm assuming.

10 Q. Did the cooperatives, then, assume the
11 responsibility of balancing any of the variabilities that
12 happen within that range?

13 A. Yeah. They will find milk that complies with that
14 size.

15 Q. Are you able to build inventory from the spring
16 flush in order to help your demand in the fall?

17 A. We, again, have a long shelf life product. We'd
18 love to be able to do that, to take advantage of it. The
19 reality is, our business has grown significantly over the
20 last ten years, and we don't know that we'll ever get
21 there. I mean, we make it and we sell it. So some day
22 possibly.

23 Q. Well, congratulations to you --

24 A. Thank you.

25 Q. -- if you can't make it fast enough to sell.

26 A. Thank you.

27 Q. You can agree with me, then, that that's a good
28 problem to have in your business; is that fair?



1 A. We feel very fortunate that we have been able to
2 innovate in the space and consumers very much love the
3 product.

4 MS. HANCOCK: Thank you so much for your time. I
5 appreciate it.

6 THE WITNESS: Thank you.

7 CROSS-EXAMINATION

8 BY MR. MILTNER:

9 Q. Good afternoon, Tim.

10 A. Good afternoon, Ryan.

11 Q. For the record, I'm Ryan Miltner. I represent
12 Select Milk Producers.

13 In one of your written statements, and I -- you
14 don't need to pull it out -- you seem to indicate that
15 your preference would be that all milk would be priced
16 with a manufacturing price as a minimum with no Class I
17 differential.

18 Is that the intent of what you were trying to
19 state?

20 A. It's not my intention today that that would occur,
21 Ryan. It would -- I'm urging the industry to consider how
22 to minimize regulation around the Class I and Class II
23 space, so --

24 Q. And so your support for Proposal 20 would reduce
25 your pool obligation by \$1.60, correct?

26 A. Correct.

27 Q. And would that also reduce your overall milk cost
28 by \$1.60?



1 A. Initially. But I would -- I will add this. If
2 something like that -- if 20 were to be adopted, and I
3 mentioned we have got contracts two years, five years,
4 they were built under a certain premise. Whether or not
5 we were good enough to get it in -- the right language in
6 the contract that says, if this occurs, you will do this;
7 if this occurs, you will do this, we will have to adjust
8 accordingly, and very clear from my perspective as the
9 buyer, the premise in which we went into the contract. So
10 if we were to turn around here tomorrow and eliminate the
11 \$1.60, I would go back to every one of my vendors and say,
12 "We recognize there's a change here, we need to make sure
13 you are whole while we work through to get to a new
14 contract." And that's my -- that's how I would manage the
15 process.

16 Q. And I think some other handlers that have
17 testified on Proposal 20 have suggested something similar,
18 that at least a portion of what would not be paid in a
19 differential, they would seek to return to their farmer
20 suppliers.

21 Is that kind of what you are trying to convey
22 there?

23 A. I don't even know that I would call it a portion,
24 I might give it all to them. That would be more my take.
25 Again, based upon certain premises. Until you get to
26 another point to where you can negotiate appropriately.

27 MR. MILTNER: Thanks very much.

28 THE WITNESS: Yep. Thank you, Ryan.



1 THE COURT: Is there other cross-examination
2 before I call on the Agricultural Marketing Service for
3 questions?

4 There is none. I call on the Agricultural
5 Marketing Service for their questions.

6 MR. WILSON: Todd Wilson, AMS.

7 CROSS-EXAMINATION

8 BY MR. WILSON:

9 Q. Good afternoon, Mr. Doelman.

10 It's good to have you back.

11 A. Thank you.

12 Q. I -- I'm going to say the same thing Ms. Taylor's
13 been saying in the past. Thank you, Ms. Hancock and
14 Mr. Miltner, for some of the questions, because they --
15 they have shortened mine some.

16 So specifically on Exhibit 26A, I'm going to jump
17 to page 3, the top of that paragraph you talk about paying
18 for services and goods beyond the base milk.

19 Could you expand on what you mean by "base milk"?

20 A. Yeah. I think, for me, I use the term "base milk"
21 as kind of a general reference to what an average buyer
22 might want. And an average buyer might just want everyday
23 milk that's being produced in the marketplace, delivered
24 kind of when they want it.

25 And as some of the cross-examination was pointing
26 out earlier, we have certain needs. Whether or not it's a
27 full tank, certain quality attributes, bacterial
28 attributes, temperature, even things related to animal



1 welfare. I mean, things that are, like, different than
2 how would you just think about buying milk in the
3 marketplace. To me, a general spot you might purchase in
4 the marketplace, call that base milk. And what I'm buying
5 is much more detailed than just picking up a commodity
6 milk in the marketplace. So that's what that's referring
7 to.

8 Q. Okay. It's not necessarily a value you are
9 associating --

10 A. No, no, not at all.

11 Q. -- like a minimum value --

12 A. I probably could have used a better term because I
13 know we used the term "base." I apologize for that.

14 Q. Just trying to clarify the record. Thank you.

15 In that list you have receiving disruptions, and
16 maybe you answered that through another question, but I
17 think I missed it in my mind.

18 Could you expand a little bit on what you mean by
19 "receiving disruptions"?

20 A. Yeah, where -- where we basically shut a plant
21 down and don't operate for three days. That's
22 significant. And we recognize that.

23 Q. So are you paying for the undelivered milk?

24 A. Correct.

25 Q. Okay. What -- would you be willing to say what
26 kind of value when --

27 A. I'm not going to go into the specific --

28 Q. Yeah. Okay. All right.



1 A. -- values of -- of these items.

2 (Court Reporter clarification.)

3 THE COURT: But it would be good if he could have
4 finished his question. We get your drift.

5 THE WITNESS: And I get yours. Thank you.

6 MR. WILSON: And I'm not used to this, so I think
7 I walked over Mr. Doelman as well on my questions.

8 BY MR. WILSON:

9 Q. I think Mr. Miltner covered that one for me.

10 So one of the -- one of the -- the center
11 paragraph of that you talked about your contracts and how
12 any change in differentials would kind of upset the apple
13 cart, or upset the market, so to speak.

14 That's the same to be said on all the proposals,
15 correct?

16 A. Yes. You are 100% correct.

17 Q. The only thing that wouldn't is to keep the same
18 differentials that we have today.

19 And so my question is, do you have a -- do you
20 oppose that?

21 A. I -- I personally do not. My -- it's not so much
22 about opposition. I think I was asked a question that --
23 Ryan asked it, well, what would you like to see?

24 I would just -- I think it behooves the industry
25 to figure out how to minimize -- I don't want to call them
26 unnatural, but not marketplace drivers to costs, so
27 that's -- that's -- that's why -- you know, that's why I'm
28 here testifying. That's why I'm in MIG.



1 Q. So going into the next page, you talk about the
2 tools that have been used in the past and how, you know,
3 you would like to see the industry, you know, kind of
4 change and things like that.

5 So the marketplace has always offered the
6 opportunities to negotiate for any real value that they
7 feel like needs to be different than what the minimum
8 price is.

9 Has that always -- has this criticism of -- of
10 what the marketplace is trying to drive to versus what
11 regulation is driving, has that always been a criticism in
12 the industry in the way of differentials?

13 And kind of to -- to say this another way, is the
14 over-order premiums that exist in the industry and the
15 Federal Order differentials, they have co-existed for a
16 long time. Are we -- are we at a time and place where you
17 see that those can't any longer co-exist?

18 A. There -- it probably could co-exist. My concern
19 is -- and, again, I mentioned this around the -- kind of
20 the investment side of it. We're putting a very large
21 investment in -- in Upstate New York. Based upon the
22 three kind of principles: How big does the plant need to
23 be? Is the milk available? What's it going to cost? And
24 how far away from the market is it? And to have it
25 potentially change dramatically what my cost structure is,
26 really is a disincentive to make investments like that,
27 because it changes it.

28 And, again, I shared with you, appropriately



1 asked, what would you do if all of a sudden you got a
2 \$1.60 more, you know, that you are not spending? I would
3 give it back.

4 But there's no -- on the flip side, for me,
5 depending upon how my contracts are written, I may not be
6 able to do that, and I may really have a less competitive
7 plant now, because I can't pick up the plant and move it,
8 I mean, and that is a massive infrastructure spend.

9 So I -- what I don't like is the fear of costs
10 changing dramatically that prevent us from, you know,
11 considering those kinds of investments.

12 So that -- so I think it could exist. The change
13 and the fear of change is -- is sometimes the scariest
14 thing. So to me, from a direction, I would want to head
15 the direction of removing risks of change.

16 Q. Okay. Thank you.

17 Last page, last paragraph. In your conclusion you
18 are urging to let the marketplace determine the value of
19 Class I and II milk, so -- and you have also talked about
20 the value of the Federal Milk Order, and I think you are
21 trying to bring some of that back into this statement.
22 But I'd like to maybe -- you say, using survey prices and
23 things of that nature.

24 Can you talk a little bit more about what you are
25 trying to say in that paragraph?

26 A. I -- I think the Federal Market Order certainly
27 serves a -- a -- a great service to the industry for many
28 other -- for many aspects of it. And -- and I -- I could



1 try to go through a list, and I know I'll miss, you know,
2 80 of them, you know.

3 But having a way in which we do price discovery,
4 again, and I think based upon the manufacturing side of
5 it, is a huge benefit to the industry. From a -- the
6 survey perspective, I think, you know, making sure the
7 farmer gets paid, you know, immediately for their milk,
8 you don't end up negotiating some interesting terms where
9 they -- you know, they are held over a barrel. Ensuring
10 that that information is shared across the industry so
11 that people have visibility into it and transparency, I
12 think matters.

13 When it comes to the specific details around why I
14 say Class I and Class II, because they have always been
15 treated a little differently than that base manufacturing
16 footprint. And I think it's one reason why there's no
17 innovation in the space, and I -- I shouldn't say "no"
18 because there is some in Class II. But there is a lack of
19 innovation in the space because there's so many rules
20 around how it's going to be priced.

21 And so no one's going to make an investment in
22 figuring out how to bottle milk better one way or another
23 when the industry is geared to basically deliver a certain
24 jug milk. And I think that's where it's -- the
25 opportunity is.

26 So -- and, again, I don't have a perfect answer.
27 I don't have a solution on what you keep and what you get
28 rid of if you move down the road. I just, again,



1 inherently know that the -- if you can remove some
2 restrictions, you are going to allow the opportunity for
3 innovation.

4 And I -- I mentioned it on the food safety side of
5 things that I went through, and absolutely it's true that
6 if I can remove some of those restrictions, the industry
7 is going to be better off. We're going to innovate better
8 products. And I strongly believe that on the milk kind of
9 pricing side of it, too. You will free up areas of the
10 country, potentially.

11 I looked at -- for instance, we looked at an area
12 to go manufacture down in Georgia, and Walmart just
13 announced they are going to build a big plant there.

14 We are a mix of Class I and Class II. And just
15 the way it was structured, I really couldn't move forward
16 because there was too many rules around the price of both
17 Class I and Class II where I really couldn't have the --
18 it wasn't easy for me to have the right conversation with
19 the group of farmers that I would like to potentially
20 have.

21 What I'd like to see -- what I'd like to be able
22 to do is go into there and have a much more white paper,
23 to be able to figure out what's going to work for them
24 long-term and what's going to work for us long-term versus
25 having a dictated kind of price structure. That's
26 really -- so there's all kinds of elements that the FMMO
27 does that brings all kinds of value, I would want to
28 maintain those, from my perspective, as we move towards



1 that general direction.

2 Q. You made a comment to -- on your cross with
3 someone, I don't recall, but you -- you said the word
4 phrase, FMMOs need to provide a backstop, or wanting to
5 provide a backstop.

6 Can you talk about that a little bit more.

7 A. I think there's value in the kind of a minimum
8 price scheme. Again, a farmer is not held over a barrel,
9 visibility, I consider all those kind of backstops.

10 If -- if -- you know, I mean, I certainly can
11 understand the situation if someone were to, I don't
12 know -- I don't know -- I don't even know the exact
13 situation, because it goes both ways. I mean, you could
14 say, you know, the plant's got all the power, or the
15 farmer's got all the power. I don't know who's got all
16 the power. I know when you are in that situation, you
17 both need each other typically. So -- but having --
18 having a -- a FMMO system I think does create some
19 stability for the industry.

20 So, again, I -- I don't have all the answers. I
21 don't know all the details there, Mr. Wilson. But I know
22 there's a bunch of details there that I'm sure would be
23 advantageous.

24 Q. Thank you, Mr. Doelman.

25 A few questions that we have been asking several
26 of the participant witnesses, and maybe you have answered
27 this.

28 We have asked people about their Class I products



1 as far as ESL, HTST, 100%?

2 A. What's the question, I'm sorry?

3 Q. What level of percentage of your product in
4 Class I is one or the other?

5 A. 100% ESL.

6 Q. The code date, code life, if you will, of that
7 product, we have heard 70-something? Higher than that?

8 A. We're even higher than that.

9 Q. Into that range.

10 A. And because of the extra infrastructure and spend
11 around technology we have made into that space.

12 Q. I know you have been here in the past, and we
13 might have asked this question. If we did, please let me
14 know. You probably know better. We asked about the
15 components of milk on -- as they relate to Proposals 1 and
16 2, in that grouping.

17 Are you aware of your own receipts in your four
18 plants, are they -- would you speak to that as far as your
19 component levels?

20 A. As far as solids and butterfat?

21 Q. Protein and other solids.

22 A. I'm going to -- you can correct me if I'm wrong --
23 I'm assuming the question is more around protein, but I
24 could be wrong.

25 Butterfat, I think we range anywhere between 3.5
26 on the low, depending on time of year, to 4, sometimes
27 4.2, depending upon, again, time of year, which herds, and
28 some general fluctuations that can occur.



1 On the SNF, to be honest, I don't even pay
2 attention to SNF, so -- because I sell protein.

3 So I do pay attention to protein. Protein can
4 range from 3.1 to 3.4. You know, it can be somewhere in
5 that space, also.

6 Q. Okay.

7 MR. WILSON: Thank you. I think that's all I
8 have. Thank you.

9 THE COURT: Are there any other cross-examination
10 questions before I turn to redirect?

11 There are none.

12 Redirect.

13 MR. ENGLISH: Chip English, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. ENGLISH:

16 Q. I just have one quick follow-up to the questions
17 from USDA, and I don't want to -- I'm not asking for
18 details, obviously.

19 But is protein one of those attributes that you
20 compensate your supplier for in the over-order premium?

21 A. Yes.

22 MR. ENGLISH: Your Honor, I have no further
23 questions for this witness. I now ask for your ruling on
24 my prior motion to admit Exhibits 487 and 488.

25 THE COURT: Is there any objection to the
26 admission into evidence of Exhibit 487, also marked
27 MIG/fa!rlife -- all lower case -- -26?

28 There are none. Exhibit 487 is admitted into



1 evidence.

2 (Thereafter, Exhibit Number 487 was received
3 into evidence.)

4 THE COURT: Is there any objection to the
5 admission into evidence of Exhibit 488, also marked
6 MIG/fa!rlife -- all lower case -- 26A?

7 There are none. Exhibit 488 is admitted into
8 evidence.

9 (Thereafter, Exhibit Number 488 was received
10 into evidence.)

11 MR. ENGLISH: Your Honor, I believe this witness
12 may be excused. I note that this is our last fact witness
13 on MIG's Proposal 20.

14 We do anticipate, and I think Ms. Vulin will
15 summarize later, but we do anticipate that when we return
16 on January 29th, Dr. Stephenson will return to respond to
17 the questions asked of him earlier this week.

18 And otherwise, MIG does not have any further
19 testimony on what is called Proposal 20. We do
20 anticipate, at the end of the hearing, a witness on
21 opposing Proposal 21.

22 THE COURT: Thank you, Mr. English.

23 MR. ENGLISH: That concludes my examinations.

24 THE COURT: It gives you a good feeling, doesn't
25 it? That was a lot of work.

26 Mr. Doelman, it's always a pleasure to hear from
27 you. And I thank you for being here not just once, but
28 again.



1 THE WITNESS: Thank you.

2 THE COURT: You're welcome. You may step down.

3 How much preparation do we need before the next
4 witness? Will we be distributing documents?

5 MR. ROSENBAUM: Yes, Your Honor.

6 THE COURT: Let's take a break. I'll entertain --
7 oh, no. I'll just say ten minutes. Please be back and
8 ready to go at 2:33.

9 (Whereupon, a break was taken.)

10 THE COURT: Let's go back on record.

11 We're back on record at 2:33.

12 I'd like the gentleman in the witness chair to
13 state and spell his name.

14 THE WITNESS: My name is Mike Brown, M-I-K-E,
15 B-R-O-W-N.

16 THE COURT: Good to see you on the witness chair
17 again.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You remain sworn.

20 THE WITNESS: Yes.

21 MIKE BROWN,

22 Having been previously sworn, was examined
23 and testified as follows:

24 MR. ROSENBAUM: Good afternoon. Steve Rosenbaum
25 for the International Dairy Foods Association.

26 I have circulated a copy of IDFA Exhibit 64, which
27 I would ask be marked with the next Hearing Exhibit
28 number, which I believe is Hearing Exhibit 489.



1 THE COURT: Yes.

2 (Thereafter, Exhibit Number 489 was marked
3 for identification.)

4 DIRECT EXAMINATION

5 BY MR. ROSENBAUM:

6 Q. Mr. Brown, showing you Hearing Exhibit 489.

7 Is this a copy of your written testimony regarding
8 Proposal 21, which is a proposal to increase the Class II
9 differential?

10 A. Yes, it is.

11 Q. Okay. And --

12 THE COURT: And just so that that was clear,
13 that's Exhibit 489.

14 BY MR. ROSENBAUM:

15 Q. And is -- is your testimony here testimony in
16 opposition to that proposal?

17 A. Yes.

18 Q. Okay. Mr. Brown, I'm not going to ask you to read
19 the entirety of your testimony into the record, but I'm
20 going to take you through some highlights, I believe, if I
21 could.

22 And so is it fair to say that you have set forth
23 four main reasons why you and the International Dairy
24 Foods Association are against this proposal?

25 A. Yes.

26 Q. So let's flip to page 3.

27 And can you just read -- each of these reasons is
28 one of the headings, A, B, C, D. So could you start by



1 reading heading A.

2 A. Class I -- Class II, excuse me -- Class II
3 differentials should not be raised in light of the more
4 than adequate milk supply.

5 Q. Okay. So we have heard the statistic many times.
6 What's the percentage of milk pooled on the
7 Federal Orders that's Class I?

8 A. Class I is approximately 27, 28%.

9 Q. And what is the percentage of Class I fluid milk
10 of the milk supply as a whole, not merely Federal Order
11 milk?

12 A. About 20%, slightly less.

13 Q. And what is the percentage that Class II is of the
14 Federal Order system?

15 A. 9%.

16 Q. Okay. Now, combined, therefore, you have got at
17 the maximum, just at the Federal Order level, roughly 36%
18 of the milk being Class I or Class II combined, correct?

19 A. Correct.

20 Q. Which means, by definition, you have got 64% that
21 is Class III or IV, correct?

22 A. Yes.

23 Q. And is there -- and is -- is that milk sometimes
24 referred to as the reserve supply?

25 A. Yes, it is.

26 Q. That's the milk that's going to manufactured
27 purposes, correct?

28 A. Correct.



1 Q. And do we have guidance from USDA as to what an
2 adequate reserve supply is?

3 A. Yes.

4 Q. And what's that percentage?

5 A. USDA has deemed 30 to 35% as an adequate reserve
6 supply.

7 Q. An adequate supply?

8 A. Yes.

9 Q. Okay. And in that context then, what conclusion
10 do you reach as to whether the current milk supply is
11 sufficient to meet Class I and II needs?

12 A. It's almost double the amount percentage-wise that
13 you would need to meet I and II, and it is double if you
14 include all milk, not just pooled milk.

15 Q. And so if the question is, do we need to be
16 raising Class II differentials in order to attract more
17 milk production in order to meet Class I and Class II
18 needs, is there -- do you view that as a legitimate
19 reason?

20 A. We do not need it. And I would like to just --

21 THE COURT: I need more volume, either come
22 closer --

23 THE WITNESS: Okay. I'll move it. There you go.

24 We don't -- we don't need it. The reason is,
25 Class II -- and we have heard it a couple of times -- is
26 pretty unique, because it is the one class where you can
27 manufacture most of the products in that class from fresh
28 milk and also from dried ingredients. So it has actually



1 a very large reserve supply available.

2 BY MR. ROSENBAUM:

3 Q. Okay. Now, has USDA, in fact, looked to the
4 adequacy of the milk supply in the past in determining
5 whether or not the Class II differential should be raised?

6 A. Yes, they have.

7 Q. And is -- and on pages 4 and 5, do you, in fact,
8 summarize that history in discussing a national hearing
9 that was held back in 1993 where there were several
10 proposals to raise the Class II differential and -- and so
11 USDA was confronted with this question, correct?

12 A. Yes, they did. I mean, they acknowledge there are
13 some unique properties, but there was no reason to raise
14 the differentials.

15 Q. Okay. And if you turn to page 5, the first full
16 paragraph that starts with a "nonetheless," the word
17 "nonetheless." The "nonetheless" follows a discussion of
18 the various reasons the proponents have given for
19 increasing the Class II differentials.

20 Can you now just read what it is that USDA had to
21 say?

22 A. And I'll read that. I'll read that from the
23 beginning: "Nonetheless, none of this was enough to
24 convince USDA, which rejected all of the proposals, to
25 increase Class II differentials. USDA's reasoning was
26 telling and remains highly relevant today. In rejecting
27 the proposals to increase Class II differentials, USDA
28 focused on the fact that over-order premiums 'in



1 conjunction with Class I prices are generating adequate
2 supplies of Grade A milk for both Class I and Class II
3 needs.' Accordingly -- "

4 THE COURT: That last word is, within the quotes?

5 THE WITNESS: "Needs."

6 THE COURT: So I have got "uses" on my copy. I
7 don't know which is accurate.

8 MR. ROSENBAUM: Mine says "uses" as well.

9 THE WITNESS: Okay. "Uses" is it. Because you
10 have the official transcript copy.

11 "Accordingly, USDA 'concluded that an increase in
12 Class I differentials' -- 'in Class II differentials under
13 all orders is not needed.'"

14 BY MR. ROSENBAUM:

15 Q. Okay. I think you ended up skipping -- I'm sorry,
16 one of the sentences, and maybe that's what happened the
17 first time around, too.

18 A. I -- I finished with "uses." I had not completed
19 the last sentence --

20 THE COURT: Oh, there's one that says "uses" and
21 there's one that says "needs."

22 So would you just start again with "USDA focused
23 on the fact that."

24 THE WITNESS: "USDA focused on the fact that
25 over-order premiums 'in conjunction with Class II' --
26 'Class I prices are generating adequate supplies of
27 Grade A milk for both Class I and Class II uses.'
28 Specifically, 'an analysis of supply and demand conditions



1 under the orders indicates that there are adequate
2 reserves of Class III milk to balance both Class I and
3 Class II uses'" -- good Lord. I give up. It's a long
4 week.

5 THE COURT: All right. And so you have just read
6 the Class I and Class II "needs."

7 THE WITNESS: "Needs."

8 THE COURT: And you have ended the quote there,
9 but you're about to say a little bit more. Keep going.

10 THE WITNESS: "Accordingly, USDA 'concluded that
11 an increase in Class II differentials under all orders is
12 not needed.'"

13 BY MR. ROSENBAUM:

14 Q. And that's fine.

15 And just for clarification, there's a reference
16 there to Class -- that there were adequate reserves of
17 Class III milk.

18 Do you see that?

19 A. Yes. There was no Class IV when this was written.

20 Q. Okay. So when this decision was written in 1993,
21 Class III encompassed what is now both Class III and
22 Class IV, correct?

23 A. That is correct.

24 Q. Okay. All right.

25 So let's go ahead and move then to the second
26 rationale you provide as to why you and IDFA are opposed
27 to Proposal 21. And if you could read the title of
28 Number B on page 6.



1 A. Yes. B is: Proposal 21 would cause Class II
2 handlers to switch to Class IV products, reducing farmer
3 revenues.

4 Q. Okay. Now, let's just start by something you
5 alluded to before, which is that Class II products can
6 often be made either from fresh farm milk or from dry milk
7 products, correct?

8 A. Correct.

9 Q. Okay. And if it's -- just to orient ourselves, if
10 it's made for -- from fresh farm milk, then it's -- the
11 milk is priced at Class II, correct?

12 A. Correct.

13 Q. If it's made from dry products, it's Class IV,
14 correct?

15 A. Yes. It's nonfat dry milk and buttermilk are
16 Class IV.

17 Q. So right now, the Class II price is the Class --
18 under the current regulation, is the Class IV price plus
19 \$0.70, correct?

20 A. It's the Advanced Class IV price plus \$0.70.

21 Q. So if one were to provide an economic incentive
22 for Class II handlers, or handlers, people making Class II
23 products, to make their milk from dry milk products rather
24 than fresh milk, that reduces what farmers get paid for
25 the milk by \$0.70, correct?

26 A. On that milk, yes.

27 Q. Okay. So that would be the downside of
28 Proposal 21 from a farmer perspective, if the effect of



1 Proposal 21 was to encourage the substitution of dry milk
2 powder for fluid milk, correct?

3 A. That is the most important concern.

4 Q. Okay. And have -- have you performed an analysis
5 that -- with hard numbers, as to whether the \$0.86
6 increase in the Class II differential that Proposal 21
7 would put in place, would, in fact, provide a substantial
8 economic incentive for Class II handlers to switch from
9 using fresh farm milk to instead using dry milk powder?

10 A. Yes. It's the table on top of page 8.

11 Q. Okay. So, please, since this is an important part
12 of your testimony, just walk us through that table on the
13 top of page 8, if you would, please.

14 A. Just for premise, most of you know I spent time
15 sourcing milk and dry products for manufacturing. This is
16 exactly the kind of analysis that we would do to determine
17 what to buy or to source a plant.

18 Q. You are referring to your time at Kroger?

19 A. Yes. Yes.

20 Q. Okay.

21 A. And so this is a market-based cost comparison.
22 What that -- for delivered Class II skim solids. What
23 that means is I pulled industry, pulled big uses of dry
24 milk in Class II plants --

25 THE COURT: Slow down, please, Mr. Brown.

26 THE WITNESS: Yeah.

27 THE COURT: Yes. You have got the time.

28 THE WITNESS: -- in Class II plants, to get their



1 actual current costs, both for fresh milk as well as for
2 nonfat dry milk.

3 So what I did was look at three examples: One
4 where they would purchase nonfat dry milk, one where they
5 would use farm milk as a current Class II differential,
6 and one, what farm milk would cost at the proposed
7 Class II differential.

8 So to walk through the purchase example. For
9 consistency, because there are lags in different nonfat
10 dry milk price series, I used the same one for all three
11 examples. I used the 2023 NDPSR advanced nonfat dry milk
12 price, which is \$1.2181, and that was the 2023 average. I
13 added to that --

14 THE COURT: I still need you to slow down.
15 Because you are dealing with numbers, and we're looking at
16 your chart, but typing all this and capturing everything
17 you say is not easy.

18 THE WITNESS: Yeah, I -- I -- numbers excite me,
19 that's the problem. I like this part.

20 So I added to that the delivery cost, and this
21 includes any premium or surcharge for that nonfat dry
22 milk, plus transportation costs delivered into those three
23 plants, the average.

24 BY MR. ROSENBAUM:

25 Q. And how much is that?

26 A. That is \$0.0375 per pound.

27 Q. Okay.

28 A. I then -- I then -- so the delivered cost, adding



1 the delivery cost and the advanced price, was \$1.2556 per
2 pound.

3 Q. So the third, just so we're clear, the third entry
4 is simply adding the first two entries together; is that
5 right?

6 A. Yes. That is what we call the landed or delivered
7 cost of nonfat dry milk.

8 Q. And that's \$1.2556.

9 A. Correct.

10 The final line, because nonfat dry milk is 97%
11 solids and 3% water, to compare it to solids nonfat price,
12 you have to adjust for that. So you take that 1.2556, you
13 divide it by .97, and so you get a delivered nonfat solids
14 cost per pound on nonfat dry milk of \$1.2944.

15 Q. And so that -- that's the key number. That's --

16 A. Yes.

17 Q. -- that's what it's going to cost you to get the
18 nonfat solids delivered to your actual processing
19 facility --

20 A. Correct.

21 Q. -- if you are using nonfat dry milk, correct?

22 A. That is correct.

23 Q. Let's go to the -- let's do the next comparison,
24 then, which is, as you said, what's it going to cost you
25 if instead you use -- well --

26 A. If you use Class II skim.

27 Q. Right.

28 A. And that Class II -- that Class II skim price,



1 again, the base price of that is the advanced nonfat dry
2 milk price that's surveyed by NDPSR. And -- and the
3 Class IV SNF price per pound was \$1.398 [sic], and that is
4 the -- again, that is -- that's using the yield formula to
5 calculate the SNF price under the Federal Order for
6 Advanced Class IV.

7 Q. Okay. Just so we're clear about this, what you
8 are doing is you're stepping through the formula in the
9 Federal Order --

10 A. Right.

11 Q. -- for how you get to the Class II price --

12 A. Right.

13 Q. -- correct?

14 A. It's the price calculation, that is correct.

15 Q. And it's based off the Class IV price. That's why
16 you are repeating the Class IV --

17 A. Right.

18 Q. -- price as the first entry in this calculation?

19 A. That's right. They start at the same number.

20 Q. Yes. And now you have taken us through the yield
21 factor and the Make Allowance, that's what the second --

22 A. Right.

23 Q. -- adjustment is? Okay.

24 A. And then --

25 THE COURT: I need to stop you, Mr. Brown. You
26 read \$1.398, which when you don't tell me where the
27 decimal point is, I might get confused and think it's a
28 \$1.30 instead of a \$1.03.



1 THE WITNESS: It is 1.0398.

2 THE COURT: Good.

3 THE WITNESS: To convert that into a Class II
4 solids not -- solids nonfat price per hundredweight, you
5 multiply that Class IV price, 1.0398, times nine, add
6 \$0.70, to get \$10.06.

7 BY MR. ROSENBAUM:

8 Q. Okay. So what you have done there is you have
9 added -- you have added the current Class II
10 differential --

11 A. Yes.

12 Q. -- of \$0.70, correct?

13 A. Right.

14 Q. Keep going, please.

15 A. Once you do -- once you do that, the next line,
16 again, was the delivery cost, premium delivery cost to
17 move that -- that Class II SNF into these same plants, and
18 it averaged \$1.30 per hundredweight. So your total cost
19 on a hundredweight basis would be the 10.06 -- 10.06 --
20 plus 1.3000, gives you a delivered Class II skim price per
21 hundredweight of \$11.36. Again, there's nine pounds of
22 SNF in 100 pounds of Class II skim, so your delivered
23 nonfat solids cost per pound is 1.2620.

24 Q. All right. So bottom line, under today's --

25 THE COURT: Mr. Rosenbaum, just to be clear,
26 express that bottom line in dollars and cents, please,
27 Mr. Brown.

28 THE WITNESS: I don't use a point?



1 THE COURT: Yeah, you do, but start with \$1.

2 THE WITNESS: \$1.2620.

3 THE COURT: Thank you.

4 BY MR. ROSENBAUM:

5 Q. So the bottom line is, under the current regime,
6 if you are comparing these two choices, using fresh milk
7 is slightly cheaper than using nonfat dry milk, correct?

8 A. That is correct.

9 Q. Okay. Nonfat dry milk, the cost is \$1.2944; under
10 the current regime using fresh milk, the price is \$1.2620.
11 Correct?

12 A. Correct.

13 Q. So now let's move on to what happens if
14 Proposal 21 were to be adopted.

15 A. Proposal 21, just for your own reference, the only
16 difference in these numbers is that the -- you change the
17 current differential of \$0.70 to Proposal 21's proposed
18 differential, which is \$1.56.

19 So just to -- so if you would go to the Class II
20 SNF line per hundredweight, you will see it is \$10.92
21 compared to \$10.06 under the current formulas.

22 Q. And what's the -- what's the bottom line number,
23 then?

24 A. The bottom line is, when you -- everything else
25 again's the same, \$1.3576, \$1.3576 is the delivered skim
26 cost per pound for nonfat dry milk.

27 Q. So you have got --

28 A. I meant, nonfat milk solids, excuse me.



1 Q. You have got the actual difference in the
2 paragraphs below.

3 So just in reading, am I understanding this
4 correctly, that were Proposal 21 to go into effect, it
5 would be \$0.0632 cents per pound cheaper to use nonfat dry
6 milk on a delivered cost basis as compared to using fresh
7 milk?

8 A. That is correct.

9 Q. And is this -- and is -- I mean, when you were at
10 Kroger, you were buying milk for -- to make Class II
11 products, correct?

12 A. Yeah. We did these calculations monthly.

13 Q. So this -- this -- and you were deciding which to
14 use month to month, correct?

15 A. Correct, because we used a combination of both.

16 Q. And this is -- so this is not theoretical, this is
17 real world?

18 A. No, this is business math. Yes.

19 Q. This is?

20 A. Business math.

21 Q. Business math? I like that.

22 Okay. So, you know, go to the next page and talk
23 a little bit about -- I mean, how common is it already for
24 people to use nonfat dry milk versus skim milk to make
25 Class II products?

26 A. It's -- it's very common. And you can -- you can
27 make the decision for several reasons. It's easy to buy
28 and store nonfat dry milk. So if you think you can buy at



1 a favorable price, you can lock in your solids price for
2 your Class II products. It's very storable. There is no
3 72- or 96-hour limit on storage of -- like there is with
4 fluid milk for Grade A. And so it can give you
5 flexibility over using fresh skim. And for that reason, a
6 lot of people either use it for all or part of their
7 nonfat dry milk needs.

8 Q. Even under today -- even under today -- today's
9 regime; is that correct?

10 A. Absolutely. Yes.

11 Q. Because, I mean, how long can you store nonfat dry
12 milk?

13 A. Well, most companies say you have to use it within
14 a year of date of manufacture, but if you go to a lot of
15 foreign countries, they say two. It really -- if you keep
16 it in a dry, cool, not refrigerated, place, it will keep a
17 long, long time.

18 Q. Okay. So what is your -- you know, what is your
19 conclusion as to whether the addition -- well, let me put
20 it a little differently.

21 The math suggests that Proposal 21 would represent
22 a roughly 12 -- a \$0.10 swing in the relative value of
23 skim versus nonfat dry milk from skim currently being
24 roughly \$0.03 cheaper --

25 A. Right.

26 Q. -- to skim now being \$0.063 more expensive per
27 pound, correct?

28 A. Correct. And as we have discussed before,



1 decisions are made on halves or quarters or tenths of
2 pennies, so that's a very --

3 (Court Reporter clarification.)

4 THE WITNESS: Yes. I apologize.

5 And what you have heard many times before,
6 decisions on purchasing are often made on halves or a
7 quarter or a tenth of a penny. So that's a very
8 significant difference.

9 THE COURT: All right. And just to be sure we're
10 clear, that \$0.0632 higher is per pound?

11 THE WITNESS: Per pound of solids non- -- or
12 nonfat solids -- per pound nonfat solids, yes.

13 THE COURT: Thank you.

14 BY MR. ROSENBAUM:

15 Q. One moment.

16 Okay. You now have a section that addresses
17 Section C.

18 Could you please describe what that issue is
19 about.

20 A. Proposal 21 also creates a significant
21 disadvantage for Class I processors that also manufacture
22 Class II products in their Class I distributing plant.

23 I had the discussion with the dairy plant
24 controller from Kroger, who I -- as you can imagine, I
25 know very well. Kroger runs 15 dairy plants. One is a
26 Class II; the others are combinations of Class I and II.
27 About -- about using powder and how it affects it. And he
28 says, well, in general, what it -- when you buy Class IV



1 base solids and use it in Class II products, it's going to
2 be upgraded in cost.

3 So compared to a standalone plant which doesn't
4 have to be pooled, so they do not have to claim any pool
5 correction to a Class II price, so they have the ability,
6 compared to a plant that's a distributing plant, to --
7 to -- to not -- not have to worry about any upcharge or
8 any adjustment to pool obligations because they are a
9 non-pool plant.

10 So the very large Class II plants can have a
11 competitive advantage on cost. And as we all know,
12 there's more and more of those large Class II standalone
13 plants being built.

14 Q. Okay. And now let's go to the last section, D --
15 okay, actually, before we do that, I believe there's a
16 paragraph that got deleted somehow.

17 Let's just talk through the comparisons you did
18 regarding how many months it would be that it would be
19 more advantageous to purchase nonfat dry milk rather than
20 using skim --

21 A. Yes.

22 Q. -- from -- from a farmer milk.

23 You have an appendix where you make a comparison
24 of the choice between the two. Can you just talk us
25 through what it is you did there.

26 And I will just mention that the appendices are --
27 have small lettering, but they are all an Excel
28 spreadsheet, which was posted to the website together with



1 the testimony itself.

2 So just talk us through what that analysis showed,
3 please.

4 A. Certainly. What -- what we looked at was just
5 frequency using actual price data back to the beginning of
6 the NDPSR price report, which was in basically spring of
7 2012 to current. We looked at monthly, end of month, full
8 month, nonfat dry milk price, because that's the reference
9 price you would use to buy the product. The Advanced
10 Class IV price, which was used to calculate both the
11 current and the proposed under Farm Bureau Class II nonfat
12 solids price, and then ran it for that entire period of
13 time.

14 One of the things that we did, when you do this,
15 is you recognize -- and we all know this -- that there is
16 a lag between the Class II advanced price and the actual
17 powder price of basically six to eight weeks. So you can
18 get some variations from month to month, particularly when
19 markets are volatile.

20 But what we found over time was that compared to
21 Proposal 21, in the 111 out of 134 months, buying nonfat
22 dry milk at the delivered cost I used would be less
23 expensive than buying Class II nonfat solids. And what
24 was particularly interesting is when you looked at -- say
25 I'm going to put together a plan, I'm going to buy nonfat
26 dry milk for six months, every six months, and buy that.
27 And I didn't pick a particular month, but, again, over 82%
28 of the time, the purchase from -- of nonfat dry milk was



1 less expensive than Class II skim under Proposal 21.

2 Q. And if I could just take you, have you look at
3 page 17, which is Appendix 1.

4 Now, is that -- is that the chart where you have
5 done this -- this comparison?

6 A. Yes.

7 Q. And so what you have done is you have gone month
8 to month, all the way back to, is it 2016; is that
9 correct?

10 A. Well, actually it's -- it's --

11 Q. 2018?

12 A. It should be 2012.

13 Q. 2012?

14 A. The spreadsheet in the Excel is back to 2012.

15 Q. Okay. I'm sorry, there's two pages. That's what
16 I'm missing. It's pages 16 and 17.

17 And so you have gone month to month, every month,
18 from January 2012 to December of 2000- -- well -- well,
19 through at least, what, July of 2023?

20 A. Well, December '23 where there's data available.

21 Q. Okay.

22 A. Because there's not six-month averages for
23 December of '23, because these are forward averages.

24 Q. Okay. And you have done month to month, the very
25 examination you took us through previously, to determine
26 would it be better to buy skim milk, farmer milk, or would
27 it be better to buy nonfat dry milk, correct?

28 A. That is correct.



1 Q. And there were 100 -- and if you look in the
2 bottom right-hand corner of page 17, there were 134 months
3 that you were covering, correct?

4 A. Correct.

5 Q. And it's cheaper to buy nonfat dry milk.

6 Under Proposal 21, it would be more advantageous
7 to buy nonfat dry milk 111 of those 134 months; is that
8 right?

9 A. That is correct.

10 Q. And what percentage does that represent?

11 A. 82.8%.

12 Q. Okay. So if you are a Mike Brown at Kroger, or
13 Mike Brown's equivalent somewhere else, what -- you know,
14 what would that tell you about what choice you ought to be
15 making for making your Class II products?

16 A. It tells you consistently and over the long-term
17 buying nonfat dry milk under the Proposal 21 would be a
18 better -- much better cost option than buying Class II
19 skim.

20 Q. All right. Let's look now -- we have covered
21 orally what was in the missing paragraph of the written
22 testimony.

23 So let's go on, then, to your last section of your
24 testimony on page 11, heading D. So --

25 A. We want to touch on C quickly, I think, or did we?
26 I think we kind of did. We're good there.

27 Q. So let's do D.

28 A. Okay. Class II is a uniquely dynamic market that



1 is functioning well and does not warrant a higher
2 differential.

3 Q. Actually, before I take you on to that, let me
4 just mention, there were some calculations done by the
5 witness from Crystal Creamery who testified this
6 morning --

7 A. Yes.

8 Q. -- that was also taking a look at the choice
9 between nonfat dry milk and -- and fluid milk for making
10 Class II products. He had a percentage number that was a
11 little different than the 82% that you have provided.

12 Could you tell us your understanding as to why
13 those numbers are different?

14 A. Those are FOB plant, or farm costs. They weren't
15 delivered costs. When you -- it didn't include service
16 charges and delivery costs.

17 It is more efficient, as you might imagine, to
18 move nonfat dry milk, which is 97% dry -- dry solids,
19 versus fresh Class II milk, which is, on the skim side, is
20 about 91% water. So it's just a function of the
21 efficiency of transportation is the main thing.

22 Q. Okay. So once -- so you had a higher percentage
23 of months where it would be better to buy --

24 A. Yes.

25 Q. -- nonfat dry milk than he did, correct?

26 A. Right.

27 Q. But that's because you have not stopped at the --
28 because -- that's because you have included the cost to



1 actually take it to get the -- get the product to your
2 doorstep as a Class II manufacturer, be it in fluid form
3 or alternatively as a dry product, correct?

4 A. That is -- that is correct. And that's the step
5 that is so important when you are looking at purchasing
6 commodities, because it's landed cost in the plant, and
7 the form of that product that can make a huge difference.

8 Q. So in that sense, his number was scary, but your
9 number is scarier, and you think more -- you think more
10 inclusive?

11 A. Yeah. Transportation efficiency is the reason.

12 Q. So tell us -- let's go to -- tell us about
13 section -- the topic that's covered in Section D.

14 A. Okay. Class II is unique -- is a uniquely dynamic
15 market, as we just said, and there's several reasons why
16 you need to consider raising that Class II differential.

17 As we have mentioned earlier, it's the smallest
18 class. It is based off of supply and demand for Class IV,
19 which isn't -- although the ingredients are the same, the
20 products are different, so the supply/demand functions can
21 be different.

22 And as we mentioned earlier, most Class II
23 products can be made with dry products, they don't require
24 fresh milk, for example, like Class I milk does. So those
25 are some of the -- some of the main things.

26 And I think another thing is farmers aren't
27 incentivized to serve Class II needs in the way they are
28 to serve Class I needs, because it isn't required to serve



1 that market to pool or to share in the pool. So a farmer
2 or a milk organization, co-op or otherwise, could elect
3 not to serve that market and still participate in the
4 pool, like other manufacturing classes.

5 And the other thing, like other manufacturing
6 classes, the price is uniform across all markets. And
7 because it's uniform across all markets, local
8 supply/demand conditions really aren't -- they are not
9 part of the regulated price, and the market provides those
10 incentives and those signals. And they're both regional
11 and seasonal.

12 Q. Is that a reason why the minimum price should
13 really be a -- strike that.

14 Is that a reason why, in your view, the regulated
15 price should truly be a minimum price?

16 A. Yes, it is. And simply because we -- there is an
17 advantage to farmers selling Class II milk, but if the
18 regulated price isn't attractive, as we have just
19 discussed in detail, it won't be purchased, they will
20 purchase dry products instead.

21 Q. Okay. You have got -- you have got a table on
22 page 13, and tell us what it shows and why you think this
23 is relevant.

24 A. We are going to have two tables. This is the
25 first one. These are from Dairy Market News reports on
26 cream and condensed skim prices.

27 The first chart compares the difference between
28 Midwest and Northeast cream prices per pound butterfat



1 from -- for five years, January '19 through December 2023.
2 And you can see there's a huge variation in what those
3 values are. And keep in mind, again, cream can be
4 substituted for Class II fat from farm milk, so -- and it
5 often is. So these opportunities, these differences, a
6 buyer is going to be watching those and -- and I know more
7 than one cream buyer, particularly, for -- who relies on
8 some of the spot market cream because of the variation in
9 price.

10 But you can see, basically the price in the
11 Midwest, there's a \$0.55 range between high and low in the
12 differences between these prices. Which means, again,
13 that's per pound fat. That's a big number. On 3.5 milk,
14 that would be \$1.80, so it's a very big number.

15 So it's important to recognize that even though we
16 have a minimum price, the market provides a lot of
17 incentives on price over time and it varies by region.
18 And -- and this allows market to provide that incentive,
19 which it does very, very well.

20 Q. Okay. All right. And now let's look at your next
21 chart.

22 Now you are looking at another Class II product,
23 condensed skim milk. Tell us what that's showing.

24 A. This chart uses the, again, Dairy Market News
25 Northeast Class II condensed skim milk price and compares
26 it to the Federal Order Class II nonfat solids price. And
27 both of these prices are based on the nonfat solids basis,
28 and they are compared.



1 And, again, while we have had reasonable stability
2 over the last couple of years, we have seen huge
3 volatility. And, again, these price relationships over
4 time, if you go back further, you would see that as well.
5 A lot of it has to do when new plants open, particularly
6 manufacturing plants, that -- that provide -- make supply
7 tighter, you will get better premiums, which you see for
8 the last two years of those blue lines, value over
9 Class II skim -- Class II solids not fat.

10 But other times, when you have plants, again, and
11 a lot of times when new plants open, cooperatives or
12 farmers that plan to supply those plants are building a
13 milk supply to fill that plant's needs once it opens or if
14 things happen. Really good weather, so you have extra
15 milk, or in the other case, a plant may be delaying its
16 opening. So you have spot -- you have spot skim without a
17 home. And if it gets really long, you will have spot
18 skim, which you would normally put into nonfat dry milk,
19 but if your nonfat dry milk capacity is already full
20 because there's plenty of milk around, the only step you
21 can take is the condensing, and then that goes on the
22 market.

23 And, again, this is a product that -- huge
24 volatility in price. Again, from my experience, you know
25 it's getting tough when brokers start to call you with
26 really cheap condensed skim milk.

27 Q. So bottom line, given that the Class II price is a
28 national price with no variability in the formula, and you



1 see this kind of movement as shown in the page 14
2 condensed skim milk discussion, and the regional
3 differences as shown on page 13, which varies
4 substantially over time between, for example, the Midwest
5 and Northeast cream price, what does that tell you about
6 how USDA ought to view setting the Class II price?

7 A. The Class II price is not a regional price. It
8 is -- it is -- it is not the only option for people making
9 most Class II products. So you could -- if you make that
10 regulated price too high, people will move away from using
11 fresh milk and they will use other -- other products,
12 including, of course, nonfat dry milk.

13 And so I think it's important to maintain that
14 market, to remain a healthy condensed skim market, so that
15 your costs of condensed skim, which, again, is more
16 expensive to condense skim than it is to just sell fresh
17 milk, remains -- remains the most competitive alternative
18 to nonfat dry milk. So people still want to use the farm
19 milk so farmers can benefit from that price.

20 And quite honestly, from the standpoint of a
21 plant, it's easier if you don't have to switch back and
22 forth, but for money, people will -- they will hire
23 someone to watch that market for them. I have done it
24 myself for a living for a little while with one company.

25 So it's just -- it's just going to create, I
26 think, destruction. It's going to create, I think,
27 inconsistency in demand for -- for condensed skim, which,
28 again, makes it difficult for a plant that's trying to



1 supply that market if their demand goes up and down every
2 month. Not because of demand for making products, but
3 being substituted by nonfat dry milk. So -- and in our
4 minds, it just makes things actually more difficult.

5 And because it's a lower value milk that replaces
6 the Class II, we think overall it could very well lower
7 the average blend price for a farmer.

8 Q. Okay. Anything else would you like to add,
9 Mr. Brown?

10 A. No. Thank you for letting me do an exercise, I
11 feel like I'm back at Kroger working but -- no. At this
12 time, I think it's just really important that we keep that
13 price at a level that allows the market to move products
14 where they need to move and doesn't incentivize use of
15 Class IV products over Class II milk.

16 MR. ROSENBAUM: Your Honor, I would move
17 Exhibit 489 into evidence. I recognize you will defer
18 that until after the cross-examinations are completed, and
19 Mr. Brown's available.

20 THE COURT: Thank you, Mr. Rosenbaum.

21 Who would begin cross-examination of Mr. Brown?

22 CROSS-EXAMINATION

23 BY MR. MILTNER:

24 Q. Good afternoon, Mr. Brown.

25 A. Good afternoon.

26 Q. Ryan Miltner representing Select Milk Producers.

27 I hope I have just a couple of quick questions.

28 On page 8 of your statement where you provide some



1 analysis of different options, where you pull a -- what I
2 assume is essentially a Class II over-order premium, you
3 call it a service charge, that \$1.30, does that come from
4 your experience or is there a source for that that you can
5 reference?

6 A. It came from a survey of Class II ice cream
7 plants.

8 Q. Okay.

9 THE COURT: A survey of Class II what?

10 THE WITNESS: Ice cream plants.

11 THE COURT: Ice cream plants.

12 BY MR. MILTNER:

13 Q. Similarly, this is in the fourth line, the final
14 line under purchased nonfat dry milk, 97% solids.

15 That would be the solids content of nonfat dry
16 milk?

17 A. Yes. That's not the yield formula. That's the --
18 it's generally viewed between 97 and 98. I used 97.

19 Q. Okay.

20 A. Which made the cost slightly higher, if anything.

21 Q. Okay. And then when you did the analysis in your
22 larger spreadsheet, which is on pages 15 and 16, did you
23 include the \$1.30 over-order premium in that analysis,
24 too?

25 A. Yes.

26 Q. Okay.

27 MR. MILTNER: That's all I had. Appreciate it.

28 THE WITNESS: Thank you.



1 THE COURT: Who next will cross-examine Mr. Brown?
2 I see no one. I invite the Agricultural Marketing
3 Service questions for Mr. Brown.

4 CROSS-EXAMINATION

5 BY MR. WILSON:

6 Q. Todd Wilson AMS. This is certainly a pleasant
7 surprise.

8 A. That forebodes for a friendly session.

9 Q. Always.

10 A. Thank you.

11 Q. A few questions on your page 7.

12 Second paragraph, you talked about the
13 relationship between Class II and Class IV prices, and I
14 want to concentrate on the last part of that sentence:
15 "But rather than" -- "that this relationship should be
16 viewed as at most an upper bounds on where the Class II
17 differential can be set."

18 Can you expand a little bit on what that means.

19 A. That -- what that means -- excuse me, my voice is
20 going, as it always does when I do these conversations, my
21 voice goes.

22 What -- what that -- what that means is, that when
23 you look at the opportunity to use those dried solids,
24 that opportunity would be the absolute upper bounds which
25 the Class II price should represent. You don't want to
26 create an opportunity to use dry solids in replace of
27 Class II nonfat solids.

28 Q. So the Class IV, that's the upper bounds --



1 A. Upper bound is that value, that is correct.

2 Q. Okay. Thank you.

3 A. The example I gave kind of walks through how that
4 would work, yes.

5 Q. Page 8 on your calculation, you identify the
6 source, "USDA Announcement of Advanced Prices and Pricing
7 Factors, November 23rd, 2023."

8 In the middle of that document you have a
9 delivered service charge Class II of \$1.30.

10 A. Yes.

11 Q. What is the source of that? Where does that
12 information come from?

13 A. Ryan asked the same question. I surveyed ice
14 cream plants, both distributing plants that are ice cream
15 as well as standalones.

16 Q. Thank you. Sorry about that.

17 On page 9 -- and I think this kind of goes into
18 your appendices as well, six months -- is there -- is
19 there a significance to the six months? I know you said
20 you didn't pick any particular comparison.

21 Is that range, is that six-month range --

22 A. Powder, if you forward -- if you buy powder in
23 groups of months, from my experience, it's usually three,
24 six, or 12, so I took the middle.

25 And just for all you know, I also included a carry
26 cost for storing that powder in the calculations. So that
27 number is also including the cost.

28 Q. Okay. The last paragraph on that page you



1 reference a testimony by a Mr. Galloway, Hearing
2 Exhibit 439, IDFA Exhibit 63.

3 What part of that paragraph is in reference to his
4 testimony? Is it all of it?

5 A. Up to, and in the fifth line from the bottom, "one
6 of my duties" -- actually, the next line, "I worked for a
7 consulting firm," is where it changes. That's from my
8 experience telling someone whether they should buy powder
9 or Class II milk.

10 So the rest of it was in his -- was in his
11 conversation, in his -- it wasn't necessarily in his
12 testimony. It was certainly in his -- I mean, it wasn't
13 necessarily in his written testimony, but he -- it was
14 in -- it was -- he brought it up in questions. He did
15 actually name companies; we left the names out.

16 Q. So the "I" and the "my" in the next sentence is
17 Mr. Brown?

18 A. That's me, yes. Should have had a paragraph
19 change there. Sorry about that.

20 Q. No problem.

21 Next, page 10, bottom of the paragraph, you talk
22 about a growing number of large standalone plants. I
23 wondered if you had any data on this. I don't know that
24 we have had any testify about this. What's growing? The
25 numbers? That sort of thing.

26 A. Sour cream, cottage cheese, standalone capacity is
27 growing. Ice cream continues to grow. Certainly yogurt,
28 although that market has flattened. There's a lot of



1 standalone yogurt plants, and a lot of them don't pool.
2 That's one of the reasons that they have not. They
3 moved -- in some cases, moved their Class II out of the
4 distributing plant because it made it more flexible to
5 serve two products.

6 Q. Thank you.

7 I want to go to these charts you mentioned on
8 page 13 and 14. And thank you for going through that. It
9 answered a few questions. I just want to make sure that
10 the record is clear.

11 The difference in colors between the red and the
12 blue, the blue would be when the Midwest is greater than
13 Northeast?

14 A. Correct.

15 Q. And the red, vice versa?

16 A. Is when Midwest is lower than Northeast, yes.

17 Q. Do you have any opinion about what happens -- what
18 happened first part of 2022? There seems to be a lot more
19 that the Northeast is greater than the Midwest.

20 A. I think your supply/demand balance changed some.
21 I also think there was some sourcing strategy on fresh
22 cream by a large manufacturer that significantly changed.
23 They went from buying cream and churning butter into
24 buying inventory butter, bulk butter. And as a result,
25 that really changed that market in a big hurry.

26 And you have had a little bit of growth in
27 mozzarella manufacturing in that market, particularly some
28 in South Dakota. That also loosened up the cream market.



1 Q. Same kind of question on the next chart.

2 Red being the FMMO Class II skim price is greater?

3 A. Red means the Class II skim price is lower, and in
4 blue means the announced nonfat solids price is higher --
5 I mean is lower, excuse me.

6 We subtracted the Class II SNF price from the
7 condensed skim price. So when it's negative, that means
8 the SNF price was higher than the condensed skim price on
9 a solids basis. When it's blue, that means that the
10 condensed skim price was higher than the SNF price.

11 Q. Thank you.

12 A. Yeah.

13 Q. And, again, the same kind of thing, is -- are you
14 thinking that your same answer on the 2022 range, that
15 it's almost blue, it's pretty much constant, something --
16 something structurally changed in the market, in the
17 industry, in the marketplace, and is that the same answer
18 as what you had on the previous chart?

19 A. It's -- on the skim solids side, yes, demand for
20 skim solids was stronger. Again, this is Northeast. This
21 isn't the caring regions, and so it was able to maintain a
22 more stable premium.

23 When you see that stable premium, that generally
24 means milk's being sold at contract, there isn't a lot of
25 spot market activity. There isn't a lot of spot market
26 activity that makes that line very volatile. Because if
27 you are selling SNF Class II, you are going to base it off
28 the price of Class II SNF, you are not going to base it



1 off the spot. But if you don't have those contracted
2 sales, you get some of the craziness we've seen in
3 previous years.

4 MR. WILSON: I think that's all of our questions
5 from AMS. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: Redirect?

8 MR. ROSENBAUM: Steve Rosenbaum for the
9 International Dairy Foods Association.

10 I actually just have a clarification. It appears
11 I am the only person in the room whose copy of this -- of
12 this exhibit was missing page 10. And so when I said
13 there's a paragraph missing, it was because I didn't have
14 page 10 in my copy, and that's what was missing. But I
15 can tell that USDA has it, because USDA was asking
16 questions off of page 10.

17 So I just want to clarify that, in fact, there --
18 in the official copy, there is nothing -- there is no
19 missing paragraph, it was just in my copy.

20 So with that, Your Honor, I will ask that the
21 official copy of Hearing Exhibit 489 be entered into
22 evidence.

23 THE WITNESS: I would observe that's what happens
24 when you have to manually collate because you don't have
25 an expensive rented copier.

26 THE COURT: Is there any objection to the
27 admission into evidence of Exhibit 489, also marked
28 IDFA-64?



1 There is none. Exhibit 489, with each page, 1
2 through 19, is admitted into evidence.

3 (Thereafter, Exhibit Number 489 was received
4 into evidence.)

5 THE COURT: Mr. Brown, you -- you are an amazing
6 source of information, and this is an extensive piece of
7 work that is very valuable. And I thank you.

8 THE WITNESS: It was -- it was my pleasure. It's
9 in my wheelhouse. This was a fun one to do the cost
10 comparisons.

11 THE COURT: Wonderful. Thank you.

12 I believe we have a minute to go. To some extent,
13 Mr. English gave us a preview of what he intends to do
14 when we return, or what his team intends to do when we
15 return for the last week of this hearing.

16 Would anyone else like to give us a preview of
17 what you would like to do?

18 MS. HANCOCK: Your Honor, Nicole Hancock with
19 National Milk.

20 We'll have two witnesses. I -- I -- I believe
21 that MIG is done putting on its witnesses for Proposal 20,
22 other than Dr. Stephenson returning.

23 We'll have Jeff Sims and Carl Rasch as both
24 rebuttal witnesses. And I would propose that Mr. Sims go
25 on other than the -- to the extent that Dr. Stephenson is
26 coming back, I would propose that Mr. Sims goes on first
27 thing in the morning on January 29th.

28 MR. MILTNER: Your Honor, we will have one of our



1 producer members, Jonathan Vander Dussen, which is spelled
2 V-A-N-D-E-R, D-U-S-S-E-N, on Monday. And I think it would
3 make sense for him to testify after lunch on Monday.

4 THE COURT: Does anyone else have a preview?

5 Mr. Rosenbaum.

6 MR. ROSENBAUM: Your Honor, we will have two
7 witnesses in opposition to Proposal 21, two additional
8 witnesses. It's Mr. Galbraith and Mr. Powell.

9 THE COURT: Mr. Galbraith and Mr. Powell?

10 MR. ROSENBAUM: Yes, Your Honor.

11 I should say, I think one of them also will cover
12 Proposal 19. Oh, I'm sorry, I left one out, Mr. Giles.

13 THE WITNESS: Yes.

14 THE COURT: And Mr. Giles will do what?

15 MR. ROSENBAUM: I believe it's 19 -- opposition to
16 Proposal 19.

17 THE COURT: Is there anything else before we go
18 off record, planning to return on January 29th at the same
19 location at 8:00 a.m.?

20 There is nothing.

21 We now go off record at 3:32.

22 (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

3

4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

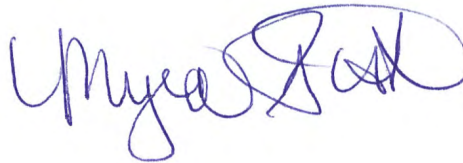
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10 DATED: February 17, 2024

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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