

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE FAIRLIFE MILK PRODUCTS
MARKETING AND SALES PRACTICES
LITIGATION**

MDL No. 2909

Master Case No. 19-cv-3924

Judge Robert M. Dow, Jr.

This Document Relates To:

ALL CASES

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs¹ respectfully submit this Reply² in Support of their Motion for Final Approval of Class Action Settlement (“Motion,” ECF No. 170), and Petition for Award of Attorney Fees and Costs, and Service Awards (“Petition,” ECF No. 172).

Significantly, ***not a single class member has objected to the terms of the Settlement.*** Furthermore, only two individuals³ have decided to opt-out of the Settlement. In sharp contrast, as of September 15, 2022, 574,899 claims⁴ have been made to the Settlement. *See* Supplemental Declaration of Cameron R. Azari, Esq. dated September 19, 2022, ¶ 17.

This extremely positive reaction to the Settlement underscores the exceptional benefits offered by the Settlement supporting final approval. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (collecting cases noting that high percentage of non-objection by class members is strong evidence in favor of the settlement). *See also Young v. Rolling in the Dough, Inc.*, No. 17-cv-07825, 2020 WL 969616, at *5 (N.D. Ill. Feb. 27, 2020) (“No class member objected or opted out of the settlement. This factor weighs in favor of approval.”); *Kleen Prods. LLC v. Int’l Paper Co.*, No. 1:10-cv-05711, 2017 WL 5247928, *3 (N.D. Ill. Oct. 17, 2017) (“[O]nly one Class Member responded by sending a letter regarding allocation of the Settlement Funds. This demonstrates that Class Members support the Settlement and attests to its fairness...this factor supports final approval as well.”).

¹ All capitalized terms herein have the same meaning as defined in the Settlement Agreement. ECF No. 153-001.

² *See* Preliminary Approval Order (ECF No. 163) at 13 (setting date for the Reply).

³ While Epiq received six documents purporting to be requests for exclusion, two of those requests were rescinded and two requests were submitted by individuals who are not members of the Settlement Class. *See* Supplemental Declaration of Cameron R. Azari, Esq. ¶ 19.

⁴ Class Counsel expect the number of filed claims to increase as the Claim Filing Deadline is not until December 27, 2022.

Accordingly, for the reasons stated above and in Plaintiffs' Motion for Final Approval of Class Action Settlement and Petition for Award of Attorney Fees and Costs, and Service Awards, and supporting papers, Plaintiffs respectfully request that the Motion for Final Approval of Class Action Settlement and Petition for Award of Attorneys' Fees and Costs, and Service Awards be granted.

Dated: September 19, 2022

Respectfully submitted,

/s/ Amy E. Keller

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SIGNATURE ATTESTATION

Pursuant to the United States District Court for the Northern District of Illinois' General Order on Electronic Case Filing, General Order 16-0020(IX)(C)(2), I hereby certify that authorization for the filing of this document has been obtained from the signatories shown above and that each signatory concurs in the filing's content.

/s/ Amy E. Keller _____

Amy E. Keller

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed using this Court's CM/ECF service, which will send notification of such filing to all counsel of record this 19th day of September 2022.

/s/ Amy E. Keller _____

Amy E. Keller

Exhibit 1

Supplemental Declaration of Cameron R. Azari, Esq.

In re Fairlife Milk Products Marketing and Sales Practices Litig.
MDL No. 2909, Lead Case No. 19-cv-03924-RMD-MDW (N.D. Ill.)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE FAIRLIFE MILK PRODUCTS
MARKETING AND SALES PRACTICES
LITIGATION**

MDL No. 2909

Master Case No. 19-cv-3924

Judge Robert M. Dow, Jr.

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**SUPPLEMENTAL DECLARATION OF CAMERON R. AZARI, ESQ. ON
IMPLEMENTATION OF CLASS NOTICE PROGRAM AND CLASS NOTICE**

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally-recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am the Senior Vice-President of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) and the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq.

4. This Declaration will provide updated settlement administration statistics regarding the implementation of the Class Notice Program and notices (the “Notice” or “Notices”) for the Settlement concerning *In re fairlife Milk Products Marketing and Sales Practices Litigation*, MDL No. 2909, Lead Case No. 1:19-cv-03924, in the United States District Court for the Northern District of Illinois. I previously executed my *Declaration of Cameron R. Azari, Esq. on Class Notice Program and Class Notice* on April 13, 2022 (ECF No. 153-1, pp. 133-191) (“Notice Plan Declaration”) in which I described the Class Notice Program, detailed Epiq’s and Hilsoft’s class action notice experience, and attached Hilsoft’s *curriculum vitae*. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs.

5. Subsequently, I executed my *Declaration of Cameron R. Azari, Esq. on Implementation of Class Notice Program and Class Notice* on July 21, 2022 (ECF No. 171-2) (“Implementation Declaration”) in which I detailed the successful implementation of the Class Notice Program. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Hilsoft and Epiq.

CLASS NOTICE PROGRAM IMPLEMENTATION

6. Federal Rule of Civil Procedure Rule 23 directs that notice must be “the best notice that is practicable under the circumstances” and must include “individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The Class Notice Program satisfied these requirements.

7. As detailed in my Implementation Declaration, the Class Notice Program reached at least 80.2% of the Settlement Class using a combination of individual notice to the identified Settlement Class Members and a media notice program (consumer print publication, digital notice, and/or social media). The Class Notice Program provided notice both nationwide in the continental United States and in the U.S. Territories (in English and Spanish). The reach was further enhanced by internet-sponsored search listings, an informational release, and a Settlement Website, which are not included in the reach calculation. In my experience, this reach of the Class Notice Program is consistent with or exceeds other court-approved notice programs and has been designed to satisfy the requirements of due process, including its “desire to actually inform” requirement,¹ while also utilizing new, sophisticated targeting techniques available via social media and electronic means.² In my opinion, the Class Notice Program as implemented reached the greatest practicable number of Settlement Class Members. Additionally, Epiq worked with Counsel for the Parties to ensure the Class Notice Program exceeded minimum reach guidelines and endeavored to ensure that the Class Notice Program stimulated claims sufficient to exhaust the Net Settlement Fund.

8. As I stated in my Implementation Declaration, CAFA Notice—as required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715 was provided to 57 federal and state officials on April 22, 2022.

¹ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

² See Fed. R. Civ. P. 23(c)(2)(B) (providing for notice via “electronic means, or other appropriate means”).

Media Plan

9. As I stated in my Implementation Declaration, the following Media Plan was successfully implemented:

- National Consumer Publication – a Publication Notice appeared in the June 13, 2022, issue of *People* as a 1/3 page ad unit.
- Internet Notice Campaign – Targeted Banner Notice advertising on the advertising networks *Google Display Network* and the *Yahoo Audience Network*, as well as Banner Notices placed on the social media sites *Facebook* and *Instagram*. Combined, more than 620.1 million impressions were generated by the Banner Notices, nationwide. The internet advertising campaign ran from May 27, 2022, through July 5, 2022.
- Internet Sponsored Search Listings – Sponsored search listings were acquired through highly visited internet search engines: *Google*, *Yahoo!*, and *Bing*. The sponsored search listings ran from May 27, 2022, through August 25, 2022.
- Informational Release – An Informational Release was issued over PR Newswire on May 27, 2022.

Individual Notice - Email

10. As I stated in my Implementation Declaration, on May 27, 2022, Epiq sent 10,234 Email Notices to all identified Settlement Class Members for whom a valid email address was available from Defendants. After completion of the Email Notice efforts, 8,791 Email Notices were undeliverable. In addition to sending an Email Notice, a Postcard Notice was sent to all identified Settlement Class Members for whom a valid mailing address was available. These individual notice efforts combined with the comprehensive Media Plan ensured that the best practicable notice was provided to Settlement Class Members.

Individual Notice - Direct Mail

11. As I stated in my Implementation Declaration, on May 27, 2022, Epiq sent 1,672 Postcard Notices to all identified Settlement Class Members for whom a valid mailing address was available from Defendants. The Postcard Notice was sent via USPS first class mail.

12. Additionally, a Notice Package, which consisted of a Long Form Notice and Claim Form (in English or Spanish) was mailed to all persons who requested one via the toll-free telephone number or by mail. As of September 15, 2022, 195 Notice Packages have been mailed as a result of such requests.

13. The return address on the Postcard Notices is a post office box that Epiq maintains for this case. The USPS automatically forwards Postcard Notices with an available forwarding address order that has not expired (“Postal Forwards”). For Postcard Notices returned as undeliverable, Epiq re-mailed the Postcard Notice to any new address available through USPS information (for example, to an address provided by the USPS on the returned mail piece if the forwarding order has expired but is still within the time period in which the USPS returns the piece with a forwarding address indicated), and to addresses Epiq obtained from a third-party address lookup service. As of September 15, 2022, Epiq has re-mailed 21 Postcard Notices to Settlement Class Members where a forwarding address was provided, or address research identified a new address.

Settlement Website

14. The Settlement Website (www.FairlifeMilkSettlement.com) continues to be available 24 hours per day, 7 days a week. Important case documents, including filings related to the Settlement, are available on the Settlement Website. In addition, information concerning the submission of Claim Forms, answers to frequently asked questions (“FAQs”), contact information for the Claims Administrator, and how to obtain other case-related information are available on the Settlement Website. As of September 15, 2022, there have been 924,228 unique visitor sessions to the Settlement Website and 4,137,300 website pages presented.

Toll-Free Telephone Number and Postal Mailing Address

15. The toll-free telephone number (1-855-604-1865) continues to be available in both English and Spanish to allow Settlement Class Members to call for additional information, listen to answers to FAQs, and request that a Notice Package (Long Form Notice and Claim Form in English or Spanish) be mailed to them. The toll-free telephone number was prominently displayed

in all notice documents. The automated phone system remains available 24 hours per day, 7 days per week. As of September 15, 2022, there have been 539 calls to the toll-free telephone number representing 1,729 minutes of use.

16. A postal mailing address continues to allow Settlement Class Members the opportunity to contact the Settlement Administrator with additional information or ask questions.

Status of Claims Process and Claim Stimulation Efforts

17. The deadline for Settlement Class Members to file a claim is December 27, 2022. As of September 15, 2022, Epiq has received 574,899 Claim Forms (574,382 online and 517 paper). Since there is still more than three months for Settlement Class Members to file a claim before the claim filing deadline, these numbers are preliminary. As the deadline approaches, I expect additional claims will be filed by Settlement Class Members. As standard practice, Epiq is in the process of conducting a complete review and audit of all claims received. There is a likelihood that after detailed review, the total number of Claim Forms received will change due to duplicate and denied Claim Forms.

Claim Stimulation Notice

18. In my opinion, the level of Settlement Class Member engagement as a result of the Class Notice Program has been robust (with over 574,000 claims filed to date) and has been consistent with my expectations in its design. Based on the claims filed thus far, it appears the Settlement Fund will be exhausted. Epiq previously discussed with Counsel for the Parties regarding additional notice measures that could be undertaken through the end of the claims period to ensure maximum participation. As a result of the claims filed to date, in my opinion a claim stimulation notice effort is not necessary.

Requests for Exclusion and Objections

19. The deadline to request exclusion from the Settlement or to object to the Settlement was August 25, 2022. As of September 15, 2022, Epiq has received six documents purporting to be requests for exclusion. Subsequently, two of these requests for exclusion were rescinded by Settlement Class Members (per section I.57 of the Settlement Agreement) who had

also filed claims pursuant to the terms of the Settlement and indicated to Class Counsel that they want their claims honored and do not want to be excluded from the Settlement Class. In addition, two requests for exclusion were submitted by individuals who are not members of the Settlement Class, which was confirmed after Class Counsel contacted the two individuals (one purchased the product in Canada only, and the other never purchased any of the Covered Products). The Request for Exclusion Report for the two remaining requests for exclusion is included as **Attachment 1**. As of September 15, 2022, I am not aware of any Objections.

CONCLUSION

20. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice plan be designed to reach the greatest practicable number of potential class members and, in a settlement class action notice situation such as this, that the notice or notice plan itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to class members in any way. All of these requirements were met in this case.

21. The Class Notice Program included a combination of individual notice to the identified Settlement Class Members and a digital/internet publication notice program (consumer print publication, digital notice, and/or social media), which reached at least 80.2% of the Settlement Class. The reach was further enhanced by internet sponsored search listings, an informational release, and a Settlement Website, which are not included in the estimated reach calculation. The Class Notice Program provided notice both nationwide in the continental United States and in the U.S. Territories (in English and Spanish). In 2010, the FJC issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach

between 70–95%.³ Here, we have implemented a Class Notice Program that readily achieved a reach within that standard.

22. The Class Notice Program provided the best notice practicable under the circumstances of this case, conformed to all aspects of Federal Rules of Civil Procedure, Rule 23 regarding notice, and comported with the guidance for effective notice articulated in the *Manual for Complex Litigation* 4th Ed. and FJC guidance, and exceeded the requirements of due process, including its “desire to actually inform” requirement.

23. The Class Notice Program schedule afforded enough time to provide full and proper notice to Settlement Class Members before any opt-out and objection deadline.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 19, 2022



Cameron R. Azari, Esq.

³ Fed. Jud. Ctr. Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-andclaims-process-checklist-and-plain-language-guide-0>.

Attachment 1



Salzhauer v Fairlife
Request for Exclusion Report

Date Submitted	First Name	Last Name
6/28/2022	Steven	Robertson
8/28/2022	Victoria	Lee