

**BEFORE THE UNITED STATES JUDICIAL
PANEL ON MULTIDISTRICT LITIGATION**

IN RE: FRESH DAIRY PRODUCTS
ANTITRUST LITIGATION (NO. II)

MDL NO. 2463

INTERESTED PARTY RESPONSE OF PLAINTIFFS IN *EDWARDS, ET AL. V. NATIONAL MILK PRODUCERS, ET AL.*, CASE NOS. 11-CV-04766-JSW, 11-CV-04791-JSW, AND 11-CV-05253-JSW (NORTHERN DISTRICT OF CALIFORNIA) TO DEFENDANTS' MOTION FOR TRANSFER OF ACTIONS TO THE NORTHERN DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED PRETRIAL PROCEEDINGS

The plaintiffs in *Edwards, et al. v. National Milk Producers, et al.*, Case Nos. 11-CV-04766-JSW, 11-CV-04791-JSW, and 11-CV-05253-JSW (Northern District of California) (the “*Edwards Plaintiffs*”), respectfully submit this interested party response to the *Motion of Defendants for Transfer of Actions to the Northern District of California Pursuant to 28 U.S.C. § 1407 for Coordinated Pretrial Proceedings*, filed on May 23, 2013.

The *Edwards Plaintiffs* urge the Panel to coordinate the two actions in the Northern District of Illinois with the three consolidated cases in the Northern District of California. Circumstances have changed in an important respect since this Panel denied a previous motion to consolidate the *Edwards Plaintiffs*' three consolidated cases with an action pending in the Eastern District of Pennsylvania. In denying the previous motion, the Panel ruled that the cases did not overlap because “the putative statewide classes in the consolidated actions consist of *indirect* purchasers of milk products, whereas movants' action is brought on behalf of a putative

nationwide class of *direct* purchasers of such products.” *Order Denying Transfer* [Dkt. # 31] in *In re Fresh Dairy Prods. Antitrust Litig.*, MDL No. 2340 (J.P.M.L. Apr. 17, 2012).

The changed circumstance is that Defendants argue in the transfer motion that the two cases in the Northern District of Illinois are brought by indirect purchasers rather than direct purchasers. The *Edwards* Plaintiffs, who are scheduled to file a motion for certification of a class of indirect purchasers by September 15, 2013, are concerned that the plaintiffs in the Illinois cases will seek certification of a class of indirect purchasers if a court finds that they are not direct purchasers. The specter of dueling class actions by indirect purchasers can be avoided if the Panel coordinates the Illinois and California actions.

If the Panel decides to coordinate the cases, the Northern District of California is the district best suited to manage this litigation as transferee district. Judge White has denied Defendants’ motion to dismiss, discovery is well underway, and a detailed scheduling order has been issued, including the September 15 deadline for Plaintiffs to file their motion for class certification. In contrast, the two cases pending in the Southern District of Illinois are in their infancy. Judge White could resolve the issue of whether the Illinois plaintiffs are indirect purchasers while allowing the *Edwards* Plaintiffs’ cases to proceed on scheduled. If Judge White were to rule that the Illinois plaintiffs are indirect purchasers, they could be included in the putative class of indirect purchasers in the California action. Conversely, if Judge White were to rule that the Illinois plaintiffs are direct purchasers, Judge White could then efficiently oversee both classes of indirect and direct purchasers. In short, regardless of how Judge White would rule on the issue of whether the Illinois plaintiffs are direct purchasers, efficiencies would result from consolidating all cases in California.

Respectfully submitted,

DATED: June 18, 2013

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